

**STATE OF MICHIGAN  
COURT OF CLAIMS**

**MACKINAC CENTER FOR PUBLIC POLICY,**

Case No. 22- 000109 -MZ

Plaintiff,

Hon. Douglas B. Shapiro

v

**MICHIGAN ECONOMIC DEVELOPMENT CORPORATION,**

Defendant.

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**\*\*\* ORAL ARGUMENT REQUESTED \*\*\***

**PLAINTIFF’S 9/12/2022 RESPONSE TO DEFENDANT’S 08/22/2022 MOTION FOR  
SUMMARY DISPOSITION**

Defendant Michigan Economic Development Corporation (“MEDC”) moved this court for summary disposition in its favor under MCR 2.116(C)(7), (C)(8), and (C)(10). Plaintiff Mackinac Center for Public Policy (“Mackinac Center”) opposes this motion and requests that this court deny Defendant’s 8/22/2022 motion.

## INTRODUCTION AND FACTUAL BACKGROUND

Plaintiff Mackinac Center has submitted a FOIA request to Defendant regarding documents used in a study that was, upon information and belief, prepared for MEDC by an outside firm, SMARInsights, in partnership with MEDC. MEDC went on to publish and promote the resulting study.<sup>1</sup> (A PDF copy of the Powerpoint presentation has been included here as Exhibit 10.)<sup>2</sup> This was called the “Pure Michigan 2019 Advertising Effectiveness and ROI<sup>3</sup> (the “Study”). *Id.* According to the Study, its production was the result of a partnership: “MEDC has again partnered with Strategic Marketing & Research Insights (SMARInsights) to measure the reach and impact of its marketing.” *Id* at 3.

Similar studies have been done for MEDC in the past, and upon information and belief, have been found to contain serious errors. For instance, the Small Business Association of Michigan (“SBAM”) reported this:

The previous vendor that had routinely conducted the return-on-investment study was replaced by Strategic Marketing by the Michigan Strategic Fund Board a few years ago.

Not long after the decision, an audit found Longwoods’ calculation of the Pure Michigan return on investment left out roughly \$16.8 million in tourism promotion costs, and also didn’t figure in any local taxes generated.

Michael LaFaive, senior director of fiscal policy for the Mackinac Center, said Thursday there’s “no independent study to corroborate the claims that Pure Michigan generates economic growth for the state,” but did say there is

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<sup>1</sup> The study can be found here on the MEDC’s website (accessed September 9, 2022): <https://medc.app.box.com/s/t1wiyahpgf3qepqxd818hh387gbhme8x>

<sup>2</sup> In the interests of clarity and simplicity, Plaintiff attaches here what was essentially the same Appendix as was attached to the Complaint, but which has additional new, cumulative exhibits.

<sup>3</sup> ROI here means “return on investment.”

“independent evidence that programs like Pure Michigan may have zero to negative impact.”<sup>4</sup>

SBAM publication dated February 26, 2020. A copy of this publication is attached as Exhibit 11.

In order to investigate and confirm or question the accuracy of MEDC’s Study, in 2020 Mackinac Center began to ask for the pertinent inputs that were used to derive the Study’s conclusions. On November 6, 2020, Mackinac Center submitted a FOIA request asking for, *inter alia*, “the input assumption worksheets used by Tourism Economics.” This is not the FOIA request at issue in this case. After the MEDC initially denied in part and granted in part this November 2020 request, conversations continued between the parties concerning the information that had been sought. As part of these communications, MEDC employees referred Mackinac Center to outside parties/contractors regarding the sought-after documents. See an MEDC email dated May 28, 2021, attached as Exhibit 9 in the Appendix.

Because the MEDC directed Mackinac Center to other people who may be able to provide that information, Mackinac Center considered the request to be ongoing and unfulfilled. When these additional communications with the outside parties proved fruitless, Mackinac Center filed a lawsuit on or about April 26, 2022, Case No. 22-000055-MZ. Defendant challenged that lawsuit based on the statute of limitations, and filed a summary disposition motion. Plaintiff did not agree that the statute of limitations had expired, for the reason that the MEDC had continued to work with Mackinac Center and had made it appear that there was a possible non-lawsuit solution. In other words, Mackinac Center had been strung along past what would have been the statute of limitations for the initial notice of denial. Nevertheless, Plaintiff knew that litigation of this issue of could easily drag out for a year or more, and agreed to dismiss. Plaintiff made the decision that

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<sup>4</sup> <https://www.sbam.org/study-pure-michigan-earned-8-79-return-for-1-spent-on-it/> (accessed September 9, 2022)

making a new, more narrowly tailored request should allow it to obtain the information much faster than the litigation in that dismissed case could have. Defendant requested that the stipulation be made with prejudice. Plaintiff agreed, knowing that it would be able to make a similar, revised request to obtain the information. Plaintiff communicated to Defendant at that time that it would be making this revised request as soon as that matter was dismissed.

On June 8, 2022, Mackinac Center made the revised, more narrowly tailored request that is the subject of this lawsuit. Mackinac requested:

Pursuant to the Michigan Freedom of Information Act, I respectfully request the following records:

- Input assumption worksheet(s) associated with the January 2020 report “2019 Michigan Ad Effectiveness Study.”

To assist in your search, please note that input assumption worksheets have been provided to us in the past by the Michigan Economic Development Corporation. Examples of these records are attached as Exhibit A.

As you know from past communications, we recognize the possibility that Pure Michigan-related input assumption worksheets may not be currently held in possession of the state. To the extent these records are in the possession of one of MEDC’s contractors, such as Tourism Economics, please instruct said contractor to provide them.

Pursuant to MCL 15.234(1)(c), I respectfully request this data be provided to me in an electronic format, to the e-mail address listed below. Please contact me if the total cost of this request will exceed \$500.00, or if I can clarify any portion of this request to simplify the production of records or otherwise limit the expense or difficulty of fulfilling this request.

June 8, 2022, FOIA Request, Exhibit 1 in the Appendix, reproduced in full. Unlike any previous request, this request was more focused, and included the fact that the information, although prepared for and used by MEDC, may be currently in the possession of a contractor.

This was different than the FOIA request that had been the subject of the previous lawsuit. That request was substantially different in scope and focus. The entire request is attached herein

as Exhibit 1 in the Appendix. A key portion of the previous request asked for “The input assumption worksheets used by Tourism Economics and any related ‘direct, indirect and induced impacts’ output produced directly from its modeling effort for the MEDC/MSF Strategic Marketing and Research Insights report ‘2019 Michigan Ad Effectiveness Study,’ and/or its ‘Economic impact of Advertising-Generated Tourism in Michigan – 2018’ report.” Note that this previous request asked *only* for worksheets used by Tourism Economics. But based on subsequent communications, Mackinac Center was made aware that Tourism Economics<sup>5</sup> may not have this information, and so the request that is the subject of this instant lawsuit asked for “To the extent these records are in the possession of one of MEDC’s contractors, *such as* Tourism Economics, please instruct said contractor to provide them.” Exhibit 1, *supra* (emphasis added).

The previous request was broader in scope: It covered many different documents, but was also narrower in that it only sought documents from outside party Tourism Economics. The request that is the subject of this lawsuit was narrowed to the issue of input assumptions worksheets, but was broader in that it sought these from *any* contractor. The two requests are not the same.

## LEGAL STANDARDS

### **Summary disposition standards.**

Plaintiff agrees with Defendant’s summation of the legal standards for summary disposition, but disputes that these have been met.

## ARGUMENT

### **Defendant’s Affidavit is insufficient.**

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<sup>5</sup> Tourism Economics appears to be a MEDC contractor who is not a party to this lawsuit, and who has done similar work for it in the past.

At the outset, the affidavit of Sermad Bakkal, attached as Defendant’s Exhibit H, does not directly address the issue. It states, at paragraph 7, that “the Requested Documents, if they exist, are not writings that MEDC has prepared or used. The Requested Documents, if they exist, are also not owned, in possession of, or retained by the MEDC.” This paragraph 7 can be read to say that MEDC did not prepare the documents, and does not possess them now, but did have them at one time. And recall that MEDC used and promoted the study. Exhibit 10, supra. The study was produced by MEDC in partnership: “MEDC has again partnered with Strategic Marketing & Research Insights (SMARInsights) to measure the reach and impact of its marketing.” *Id.* This creates a nexus to the documents such that the MEDC is required to request them from outside contractors and provide them.

Paragraph 8 of the affidavit states: “The documents attached as Exhibit 1-A to the Mackinac Center’s Complaint are Regional Economic Models, Inc (REMI) worksheets that were prepared and created by MEDC for use unrelated to Tourism Economics. MEDC did not prepare anything similar for Tourism Economics.” This may all be true, but it is irrelevant. As was made clear in the FOIA request and the Complaint, those worksheets were provided as an example of the *type* of thing Plaintiff was requesting, and was not the exact item. “To assist in your search, please note that input assumption worksheets have been provided to us in the past by the Michigan Economic Development Corporation. Examples of these records are attached as Exhibit A.” This statement identified input assumption worksheets that had been provided in the past, and asked for anything similar – it was an *example*. This is made clear in paragraphs 8 and 9 of the Complaint:

8. ***These types*** of ‘input assumptions’ documents/worksheets that were requested had previously been provided to Mackinac Center via FOIA requests.

9. In its request, Mackinac Center ***provided an example of the requested information*** which had been provided in response to a previous year’s request: “To assist in your search, please note that input assumption worksheets have been

provided to us in the past by the Michigan Economic Development Corporation. Examples of these records are attached as Exhibit A. As you know from past communications, we recognize the possibility that Pure Michigan-related input assumption worksheets may not be currently held in possession of the state. To the extent these records are in the possession of one of MEDC's contractors, such as Tourism Economics, please instruct said contractor to provide them."

Plaintiff's Complaint, paragraphs 8 and 9, emphasis added. So while the affidavit's statement may be true, it does not shed light on the question at hand. Mackinac did not restrict this request to items prepared by Tourism Economics. It explicitly asked for materials from "one of MEDC's contractors, such as Tourism Economics..." Complaint, *Id.* (emphasis added).

The same flaw is apparent in paragraph 9. "The MEDC did not direct or control any aspect of Tourism Economics' performance." This is irrelevant, as what Mackinac asked for was from any contractor, not just Tourism Economics. Earlier in the Affidavit, at paragraph 3, Defendant states that the report was "received by the MEDC from Strategic Marketing Research Insights ('SMARInsights')." Defendant's Exhibit H, *supra*. The declaration regarding Tourism Economics makes no sense, given that Plaintiff asked for the documents from any contractor, not just Tourism Economics. Defendant makes this same error in its Argument, Br. at 6, "MEDC wasn't asked to and did not prepare these same worksheets-or anything similar for that matter-for Tourism Economics."

Paragraph 7 of the Affidavit purports to answer questions which are not up to the affiant. "The Requested Documents, if they exist, are not writings that MEDC has prepared or used. The Requested Documents, if they exist, are also not owned, in possession of, or retained by the MEDC." It is the MEDC's study. Its employees produced it in partnership with side contractors. Whether or not a component of that study was "used" by the MEDC is a joint legal and fact question as to what such "use" was. And note that the statement uses the present tense – the documents are not *now* in possession of or retained by the MEDC. This raises the fact question of

whether these documents ever were in MEDC's possession and if the MEDC, in responding to the FOIA request, sought the documents out from its current possessor.

**A public body subject to FOIA has a duty to obtain documents from a contractor in its employ.**

Defendant contends that because it is currently not in possession of any such documents, it is not required to obtain these documents from the contractor who prepared them. To support this claim, it misapplies and misconstrues a number of opinions. It cites *Victor v Thirty-Fourth Circuit Court*, unpublished opinion of the Court of Appeals, issued April 10, 2014 (Docket No. 315094), 2014 WL 1401851. But in addition to not being precedent, this case is inapplicable and improperly quoted here. Defendant uses a bracketed term instead of the opinion's actual language: "the Michigan Legislature was not foolish enough to pass a law that says the FOIA Coordinator and county clerk have to provide documents that are not in their possession but instead are in the possession of [another]." (Defendant's Br. at 7.) The bracketed term changes the meaning of the quotation. What the opinion actually says is there is no duty for county clerks and FOIA coordinators to provide such documents that are not in their possession, "but instead are in the possession of the Bureau of Elections of the ... Department of State." *Id.* It is an entirely different thing to say that a public body, when it receives a FOIA request, does not have to fulfill it by resubmitting that request to another, proper public body. The solution there, if there was one, was to submit the request to the proper public body. That has no application here. Additionally, the erroneous FOIA request in this case was submitted to a circuit court. And circuit courts are exempt from FOIA by statute – MCL 15.232(e). Therefore, this opinion has no bearing on the question here about the duty to obtain documents from the public body's contractor.



The Defendant similarly cites *Hoffman v Bay City Sch Dist*, 137 Mich App 333, 337; 357 NW2d 686, 688 (1984). *Hoffman* was a case of first impression, relied on the application of federal cases to our statute, has been called into question a number of times, and has been distinguished by *MacKenzie v Wales Tp*, 247 Mich App 124; 635 NW2d 335 (2001), which is more applicable here. In *Hoffman*, the school district's attorney conducted an investigation into the policies of the district's business and finance department. *Hoffman*, supra, at 335-336. The attorney delivered an oral opinion to the board. *Id.* at 336. A plaintiff sued to divulge the full contents of the investigation. *Id.* at 336. The court emphasized that this *de minimis* contact, the oral presentation, was not enough to require the production of the investigation information under FOIA. *Id.* at 338-339.

But compare this to *MacKenzie*, supra, a case decided after *Hoffman*. In *MacKenzie*, the sought-after documents were computer tapes related to the tax rolls. The public-body defendants argued that the tapes were not in their possession. Furthermore, they argued, because the defendants contracted out the creation of these tapes to another municipality, Port Huron, they did not possess the tapes. *Id.* at 126. The *MacKenzie* court said, "we conclude that because the tapes containing the tax information provided by defendant existed and were used in performing defendants' official function of property tax billing, as contracted for by defendants, those tapes were subject to the FOIA. Accordingly, plaintiff is entitled to judgment as a matter of law." *Id.* at 131.

Compare *MacKenzie* to the situation here. Defendant has not denied that it provided information to SMARInsights or any other contractor (except Tourism Economics). Its affidavit states that it did not prepare or use the requested documents. Bakkal Affidavit at paragraph 7. That is not the same thing as asserting that a contractor did not use Defendant's data. Similarly,

the fact that MEDC did not “direct or control any aspect of Tourism Economics’ performance” is not the same thing as denying that it provided data or information for SMARInsights or another contractor to use. Bakkal Affidavit at paragraph 9. If MEDC provided data to SMARInsights, that might not fit into a definition of “direct control.” But, nevertheless, FOIA does not require direct control for an item to be disclosable – it requires only that the writing was “prepared, owned, used.” MCL 15.232(i). And so, applying the standard of *MacKenzie*, if MEDC provided data or other information to a contractor, disclosure is required.

Most recently, a similar holding was announced in *Bisio v City of Village of Clarkston*, 506 Mich 37; 954 NW2d 95 (2020). In *Bisio*, the city contracted out work to an attorney who acted as the city’s attorney. *Id.* at 41-42. Rather than being paid a salary, the city attorney submitted his bills to the city. *Bisio v City of Village of Clarkston*, unpublished opinion per curiam of the Court of Appeals, issued July 3, 2018 (Docket No. 335422), slip copy at \*1, overruled by *Bisio v City of Village of Clarkston*, 506 Mich 37 (2020). (A copy of this unpublished decision is attached as Exhibit 12.) The Court of Appeals found that the city attorney’s documents were not subject to disclosure under FOIA. The Supreme Court reversed the Court of Appeals, holding that: “Consequently, we conclude that the documents at issue are ‘public records’ because they are comprised of ‘writing[s] prepared, owned, used in the possession of, or retained by a public body in the performance of an official function, from the time [they were] created.’” *Bisio*, supra, 506 Mich at 55.

Applying the Supreme Court’s decision in *Bisio* brings about the conclusion that it does not matter if the writings are in the current possession of MEDC. Even if they were created by a contractor, if they were used by MEDC, or if MEDC cooperated in their preparation, they must be disclosed under FOIA.

**The common law of agency applies unless it has been explicitly negated by statute.**

“Under the common law of agency, in determining whether an agency has been created, we consider the relations of the parties as they in fact exist under their agreements or acts and note that in its broadest sense agency includes every relation in which one person acts for or represents another by his authority.” *St Clair Intermediate Sch Dist v Intermediate Ed Ass'n/Mich Ed Ass'n*, 458 Mich 540, 557; 581 NW2d 707 (1998). A contractor working for, or partnering with, the MEDC is potentially in an agency relationship with it. Here, it appears that the MEDC partnered and contracted with an outside party, likely SMARInsights, to evaluate the efficacy of its programs. Whether this gave rise to an agency relationship is a fact question not properly determined here without the benefit of discovery.

The question of whether an agency relationship gives rise to FOIA discoverability has not been explicitly decided by the courts. It was raised in *Bisio* but not decided. In its Order granting leave to appeal, the Court stated:

The parties shall address: (1) whether the Court of Appeals erred in holding that the documents sought by the plaintiff were not within the definition of “public record” in § 2(i) of the Freedom of Information Act (FOIA), MCL 15.231 *et seq.*; and (2) *whether the defendant city’s charter-appointed attorney was an agent of the city such that his correspondence with third parties, which were never shared with the city or in the city’s possession, were public records subject to the FOIA...*

*Bisio v Clarkston*, 504 Mich 966; 933 NW2d 36 (2019) (emphasis added).

Despite calling for the parties to address the agency question, the Court did not decide it. A concurrence by Chief Justice McCormack and a dissent by Justice Viviano noted the failure to address the very question the Court had ordered the parties to brief. Chief Justice McCormack addressed the question at length, and noted that the common law of agency still applies unless abrogated by statute. Plaintiff cannot argue the matter better than the Chief Justice did, and quotes here at length from her concurrence:

Thus, to resolve this case, the Court need only answer one question: do common-law principles of agency apply to the FOIA so that the records created by a public body's agent while representing the public body in government affairs are subject to disclosure?

I would hold that they do. The common law applies unless it is affirmatively abrogated by our Constitution, the Legislature, or this Court. Const. 1963, art. 3, § 7; *People v Woolfolk*, 497 Mich 23, 25; 857 NW2d 524 (2014). We presume that the Legislature is aware of the common law when it acts. *Wold Architects & Engineers v Strat*, 474 Mich 223, 234; 713 NW2d 750 (2006). Although the Legislature can amend or repeal the common law by statute, it “should speak in no uncertain terms” when it does. *Hoerstman Gen Contracting, Inc v Hahn*, 474 Mich 66, 74; 711 NW2d 340 (2006). This Court will not lightly presume that the Legislature has abrogated the common law. *Velez v Tuma*, 492 Mich 1, 11; 821 NW2d 432 (2012).

Whether the Legislature has abrogated the common law is a question of legislative intent. *Wold Architects*, 474 Mich at 233; 713 NW2d 750. And there is no evidence that the Legislature intended to amend the common law of agency as it applies to the FOIA; there is no reference in the FOIA's text to suggest that agency principles do not apply, let alone language to make that clear. We presume that the Legislature is aware of the common-law rule that an agent stands in the shoes of the principal so that the acts of the agent (here, the city attorney) are attributed to the principal (here, the City). *In re Estate of Capuzzi*, 470 Mich at 402, 684 NW2d 677. If the Legislature had intended to shield records prepared or retained by a public body's agent in the performance of an official function, it would have said so. It hasn't; I would presume that common-law agency principles apply.

Moreover, applying common-law agency principles is the only way that the FOIA works. The plaintiff submitted her FOIA request to the City, an artificial entity that can only act through others. That corporations act through agents is well settled. See *Fox v Spring Lake Iron Co*, 89 Mich 387, 399; 50 NW 872 (1891). If agency principles did not apply, how could citizens obtain public records from a municipal corporation? The FOIA's definition of a “public body” for local governmental units does not include employees. See MCL 15.232(h)(iii). Yet a city can only act through its agents and employees. Thus, if agency principles did not apply to the FOIA, no records from a municipal corporation would be subject to disclosure; it can't prepare, use, or retain records on its own.

*Bisio*, 506 Mich, at 57-59 (McCormack, CJ, concurring). (Footnotes omitted.)

Whether an agency relationship exists is a fact question. See, for example, *Champion v Nationwide Sec, Inc*, 450 Mich 702, 707; 545 NW2d 596 (1996), (overruled on other grounds by

*Hamed v Wayne Cnty*, 490 Mich 1; 803 NW2d 237 (2011)). Therefore, summary disposition on this question is not appropriate at this time.

**Res Judicata does not apply where there are separate requests/claims that are made at different times.**

Res judicata is a doctrine employed by the courts to improve efficiency and encourage finality in litigation:

“The doctrine of res judicata is intended to relieve parties of the cost and vexation of multiple lawsuits, conserve judicial resources, and encourage reliance on adjudication, that is, to foster the finality of litigation.” For res judicata to preclude a claim, three elements must be satisfied: “(1) the prior action was decided on the merits, (2) both actions involve the same parties or their privies, and (3) the matter in the second case was, or could have been, resolved in the first.” “[T]he burden of proving the applicability of the doctrine of res judicata is on the party asserting it.” *Baraga Co v State Tax Comm*, 466 Mich 264, 269; 645 NW2d 13 (2002).

*Garrett v Washington*, 314 Mich App 436, 441; 886 NW2d 762 (2016), internal citations omitted. Plaintiff acknowledges that the first two elements can be met here. However, the third element is missing here because the subsequent FOIA request was different in time and content. This case was brought on a request which sought some of the same factual information but was considerably different in scope. (See the Introduction and Factual Background above.) It was narrower than any previous request in that it sought only one category of information, and it was also broader in that it sought that information from any contractor who might possess it. The previous request was limited to documents in the possession of Tourism Economics. So the FOIA request that is the subject of this lawsuit was made both at a different time, and requested information from a broader universe of potential responders acting on behalf of the MEDC.

Our Supreme Court has adopted the “‘same transaction test,’ often referred to as the ‘transactional test,’ rather than the narrower ‘same evidence test.’” *Garrett*, supra at 442. “Thus, while the question whether the same evidence is necessary to support claims ‘may have some

relevance, the determinative question is whether the claims in the instant case arose as part of the same transaction as did [the plaintiff's] claims in' the original action." *Id.* Here, it was clearly a different transaction which took place almost a year and a half apart. It was different in both scope and time.

Nor would dismissing this claim under *res judicata* serve the purpose of the doctrine. Assume that Defendant prevails here, and the claim is dismissed under that doctrine: Nothing prevents another party, perhaps even with the Plaintiff acting as counsel, from requesting the same information. As shown by the SBAM article attached as exhibit 11, there are numerous individuals and groups who would like to investigate the claims that MEDC has made as a partner in this research. Nothing prevents such a subsequent action by a different party, not even the doctrine of *res judicata*. And while Defendant would likely assert that this future hypothetical was really just the Plaintiff using the new FOIA requestor as some sort of front, this would be irrelevant. The courts have repeatedly stated that the motives of the FOIA requestor are irrelevant to the request.

“[I]nitial as well as future uses of information requested under FOIA are irrelevant in determining whether the information falls within the exemption.” *Id.* ... See also *Rataj v City of Romulus*, 306 Mich App 735, 752-753; 858 NW2d 116 (2014) (whether the attorney seeking disclosure of records sought to obtain evidence for another lawsuit was irrelevant); *Clerical-Technical Union of Michigan State Univ v Bd of Trustees of Michigan State Univ*, 190 Mich App 300, 303; 475 NW2d 373 (1991) (deeming irrelevant “[t]he initial as well as the future use of the requested information”).

*Bisio*, unpublished Court of Appeal decision, Ex. 12, *supra*, at page \*9. In *Bisio*, the FOIA requestor was the wife of a man who had another lawsuit pending against the defendant. Defendant there asserted that her request was just a “front” for her husband. The court stated that even if true, it was irrelevant. *Bisio*, *supra*, at \*9.

In short, nothing prevents another party, with or without the Mackinac Center acting as counsel, from filing a subsequent FOIA request. And if that future FOIA requestor receives the

same run-around and files a lawsuit, there will be no application of res judicata. But time and judicial resources would have been wasted when the dispute could be resolved now. That would fail “to relieve parties of the cost and vexation of multiple lawsuits, [and] conserve judicial resources...” *Garrett*, supra.

### **CONCLUSION AND REQUEST FOR RELIEF**

For the reasons stated above, Defendant’s 8/22/2022 Motion for Summary Disposition should be denied, and the case should proceed to discovery.

Respectfully submitted,

Dated: September 12, 2022

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**STATE OF MICHIGAN  
COURT OF CLAIMS**

**MACKINAC CENTER FOR PUBLIC POLICY,**  
a nonprofit corporation,

Case No. 22- 000109 -MZ

Plaintiff,

Hon. Douglas B. Shapiro

v.

**MICHIGAN ECONOMIC DEVELOPMENT CORPORATION,**  
a Michigan government state agency,

Defendant.

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**APPENDIX**



**EXHIBIT 1**

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Michigan Economic Development Corporation  
Attn: FOIA Coordinator  
300 N. Washington Square  
Lansing, MI 48913  
[medcfoia@michigan.org](mailto:medcfoia@michigan.org)

Via E-mail

Michael LaFaive  
Mackinac Center for Public Policy  
140 West Main Street  
Midland, MI 48640  
[lafaive@mackinac.org](mailto:lafaive@mackinac.org)

***Re: Request for Documents Pursuant to the Michigan Freedom of Information Act, MCL 15.231 et seq.***

To Whom it May Concern,

Pursuant to the Michigan Freedom of Information Act, I respectfully request the following records:

- Input assumption worksheet(s) associated with the January 2020 report “[2019 Michigan Ad Effectiveness Study](#).”<sup>1</sup>

To assist in your search, please note that input assumption worksheets have been provided to us in the past by the Michigan Economic Development Corporation. Examples of these records are attached as Exhibit A.

As you know from past communications, we recognize the possibility that Pure Michigan-related input assumption worksheets may not be currently held in possession of the state. To the extent these records are in the possession of one of MEDC’s contractors, such as Tourism Economics, please instruct said contractor to provide them.

Pursuant to MCL 15.234(1)(c), I respectfully request this data be provided to me in an electronic format, to the e-mail address listed below. Please contact me if the total cost of this request will exceed \$500.00, or if I can clarify any portion of this request to simplify the production of records or otherwise limit the expense or difficulty of fulfilling this request.

Sincerely,

Michael LaFaive

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<sup>1</sup> Available at: <https://medc.app.box.com/s/t1wiyahpgf3qepqxd818hh387gbhme8x>.

# Exhibit A

**Graphic 7: REMI Assumption Worksheet**

		2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Building Existing	Whole \$				0	0	0	0	0		
Building New	Whole \$				0	0	0	0	0		
Building Renovations	Whole \$				0	0	0	0	0		
Leasehold Improvements	Whole \$				0	0	0	0	0		
Site Improvements	Whole \$				0	0	0	0	0		
Machinery & Equipment	Whole \$				1126000	2885000	0	0	0		
Land	Whole \$				0	0	0	0	0		
Employment Production	FTEs (2)				110	219	219	219	219	219	219
Employment Admin	FTEs (2)				0	0	0	0	0	0	0
Annual Payroll	Whole \$				3660800	7511700	7511700	7511700	7511700	7511700	7511700
Annual Sales	Whole \$				40000000	78773000	80000000	80000000	80000000	80000000	80000000
Profit After Tax	Whole \$				0	0	0	0	0	0	0
PT Abate (SET Only)	Whole \$				0	0	0	0	0	0	0
Investment Tax Credit	Whole \$				7907	20258	0	0	0	0	0
EDJT/Training	Whole \$				55000	54500	0	0	0	0	0
Other Credits	Whole \$				0	0	0	0	0	0	0
MEGA EC (PIT)	Whole \$				142771	292956	292956	292956	292956	306799	322336
MEGA BAC (SBT)	Whole \$				0	0	0	0	0	0	0
MEGA TOTAL	Whole \$				142771	292956	292956	292956	292956	306799	322336
MEGA EC (PIT)	%										
MEGA BAC (SBT)	%										
Wage Level for Project	Current \$ 000s				33.28	34.3	34.3	34.3	34.3	34.3	34.87412
Wage Level per REMI	Current \$ 000s				50.825	52.551	54.528	56.55	58.642	60.788	63.026
Alternative PCE-Price Index 92\$ with HP					111.155	112.949	114.8	116.693	118.641	120.623	122.642
REMI Inputs											
Construction Sales	Current \$ 000s	0	0	0	0	0	0	0	0	0	0
Equipment Spending	Current \$ 000s	0	0	0	1126	2885	0	0	0	0	0
Employment	FTEs	0	0	0	110	219	219	219	219	219	219
Nullify Emp Investment Adjustment to Wage Bill	Current \$ 000s				-1929.95	-3996.969	-4429.93	-4872.75	-5330.9	-5800.87	-6165.26
Statistics											
Average Annual Wage	Whole \$	0	0	0	33280	34300	34300	34300	34300	34300	34300
For Reporting											
Total Investment		0	0	0	1126	2885	0	0	0	0	0
MEGA TOTAL		0	0	0	142.771	292.956	292.956	292.956	292.956	306.799	322.336

\*Investment - enter all items by year of investment, only new investment has economic impact, so the purchase or lease of an existing facility is not new investment for REMI purposes. Only improvements to the existing facility will be entered. \*\*Employment - enter full time equivalent employees by year employed. Equivalent are calculated by the portion of the year that they are employed. \*\*\*Incentives - enter all state incentives in the year applicable.

Document received by the MI Court of Claims.

REMI INPUTS (V 1.0)	
MBD	
Teijin Advanced Composites America Inc.	
326130	
Laminated Plastics Plate, Sheet (except Packaging), and Shape Manufacturing	
Age	\$2,163.21
	2012

and Shape Manufacturing

	UNIT	Year	1	2	3	
		REMI INPUT VARIABLE	2012	2013	2014	

New Building Investment (do NOT include land)	Whole \$		\$ -	\$ -	\$ -	
Building Renovation Investment	Whole \$		\$ -	\$ -	\$ -	
Leasehold Improvement Investment	Whole \$		\$ 740,000	\$ -	\$ -	
Co Investment in Site Improvements	Whole \$					
Total Construction	Whole \$		\$ 740,000	\$ -	\$ -	\$
Machinery & Equipment	Whole \$		\$ 6,518,000	\$ 15,000	\$ 15,000	
Projected Employment Total	FTEs		14	22	25	
Annual Payroll W/O Fringe		FRINGE %	\$ 1,600,000	\$ 2,430,000	\$ 2,818,000	\$
Annual Payroll Including Estimated Fringe	Whole \$	20%	\$ 1,920,000	\$ 2,916,000	\$ 3,381,600	\$

		Year	2012	2013	2014	
MBDP Loan	Whole \$					
Repayment Expectation	Whole \$					
Net Cost of Loan to State Government	Whole \$		\$ -	\$ -	\$ -	\$
MBDP Grant	Whole \$			\$ 150,000	\$ 225,000	
MCRP Grant	Whole \$					
Other State Tax Credits & Abatements	Whole \$					
Total State Cost	Whole \$		\$ -	\$ 150,000	\$ 225,000	\$
Local Tax Abatement	Whole \$					
Other Local Tax Reductions & Costs	Whole \$					
Total Cost to Local Government	Whole \$		\$ -	\$ -	\$ -	\$
Total Cost to State & Local Government	Whole \$		\$ -	\$ 150,000	\$ 225,000	\$

REMI Industry	Plastics and rubber product manufa		2012	2013	2014	
Investmt Spend NonRes	Nominal 000 \$	99	740	0	0	

The Michigan Court of Claims

EXHIBIT 2

EXHIBIT 2

EXHIBIT 2

June 15, 2022

Michael LaFaive  
Mackinac Center for Public Policy  
140 West Main Street  
Midland, MI 48640  
[lafaive@mackinac.org](mailto:lafaive@mackinac.org)

**Via E-Mail**

Dear Michael LaFaive:

This written notice is issued in response to your email request dated June 8, 2022 to the Michigan Economic Development Corporation (MEDC) for information under the Freedom of Information Act (FOIA), MCL 15.231 *et. Seq.*, which was received at this office on June 9, 2022.

You requested the following:

**“.....Input assumption worksheet(s) associated with the January 2020 report  
“2019 Ad Effectiveness Study.....”**

After diligent search and inquiry, it has been determined that the information requested does not exist in the name you requested or in any other name reasonably known to the MEDC. Therefore your request is denied. As our office has informed you on several occasions, what you appear to be seeking is not something that has ever been prepared, owned, used, or possessed by the MEDC.

As to the denial of your request, pursuant to section 10 of the FOIA, you may do either of the following:

1. Appeal this decision, in writing, to Quentin L. Messer, Jr., CEO, Michigan Economic Development Corporation, 300 N. Washington Square, Lansing, Michigan 48913. Your written appeal must specifically state, using the word *appeal*, that it is an appeal of this decision and must specify the reasons you believe the denial should be reversed. Mr. Messer or his designee must respond to your appeal within 10 business days of its receipt. Under unusual circumstances, the time for response to your appeal may be extended by 10 business days.
2. File an action in the Michigan Court of Claims to compel disclosure of the records. The action must be filed within 180 days after the date of the final determination to deny the request. If you prevail in such an action, the court is to award reasonable attorney fees, costs, and disbursements. Further, if the court finds the denial to be arbitrary and capricious, you may receive punitive damages in the amount of \$1,000.

Sincerely,

*Karen Wieber*

Karen Wieber  
MEDC FOIA Coordinator

EXHIBIT 3

EXHIBIT 3

EXHIBIT 3



**LaFaive, Michael D.**

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**From:** LaFaive, Michael D.  
**Sent:** Friday, November 06, 2020 9:31 AM  
**To:** medcfoia@michigan.org  
**Cc:** LaFaive, Michael D.  
**Subject:** Freedom of Information Act Request - Travel Michigan/Pure Michigan

November 6, 2020

FOIA Coordinator  
Michigan Economic Development Corporation  
300 North Washington Square  
Lansing, MI 48913

Dear FOIA Coordinator:

Pursuant to the Michigan Freedom of Information Act, MCL 15.231 et seq., and any other relevant statutes or provisions of your agency's regulations, I hereby request the following records:

- The most recent "Sole Source Justification" document involving Tourism Economics and/or its parent company, Oxford Economics, and the MEDC/MSF.
- The most recent "Sole Source Justification" document involving D.K. Shifflet & Associates and the MEDC/MSF.
- The most recent purchase orders approved by the MEDC/MSF for Tourism Economics/Oxford Economics and D.K. Shifflet & Associates and contracts related to those
- The most recent "Notice of Intent to Purchase" document involving Tourism Economics or its parent, Oxford Economics.
- Expenditure data for the 2019 and (if available) 2020 data provided by D.K. Shifflet for the MEDC.

I would prefer to receive this data in an electronic format.

- The most recent license agreement between D.K. Shifflet and the MEDC/MSF.
- Any Requests for Proposals issued by the MEDC/MSF for the purpose of locating and choosing a vendor to perform the Pure Michigan campaign insights research most recently performed by Strategic Marketing and Research Insights, whose agreement will be in effect after December 31, 2020. In the alternative, any e-mails indicating why a new RFP or contract for such services have not been let.
- Any single document that would identify a winning vendor for the RFP referenced immediately above. An example of such a document would be a "Request to Award Contract" memo, such as the one previously authored by Lauren Branneman and sent to the MSF on September 26, 2017.
- Any estimate of the "percentage of State taxes generated for every dollar spent" provided to Strategic Marketing and Research Insights by Travel Michigan/MEDC/MSF for its most recent (2020) report. Previously, this information could be found in a 2017 Michigan Office of the Auditor General letter to two lawmakers explaining that it is the MEDC that makes this information available to its contractor (then, Longwoods International).

- The responses received by Strategic Marketing and Research Insights in the course of its research for the MEDC/MSF for their most recent (2020) report “2019 Pure Michigan Advertising Effectiveness” study for questions Q4 and Q6-Q19.

If your contractor has not provided the survey results to you in a discrete format I ask that you request that of them and provide me with a copy.

- The input assumption worksheets used by Tourism Economics and any related “direct, indirect and induced impacts” output produced directly from its modeling effort for the MEDC/MSF Strategic Marketing and Research Insights report “2019 Michigan Ad Effectiveness Study,” and/or its “Economic Impact of Advertising-Generated Tourism in Michigan – 2018” report.

To be clear, I am not requesting the Effectiveness Study or Economic Impact reports themselves. Just the input worksheets and related output. However, if Tourism Economics has not provided you with the above referenced worksheets/direct output, I would like to politely request that the MEDC ask Tourism Economics for these items for the state and Mackinac Center’s behalf.

- Fiscal Year 2019 Travel Budget, including any updates.
- Fiscal Year 2019 PO Summary.
- A list of “MEDC Procurement Contracts” hired or paid by MEDC/MSF in 2019 and 2020.
- Any single document evidencing the location and dates of the 2021 Pure Michigan Governor’s Conference on Tourism.
- The 2019 Pure Michigan “Partnership Contact List/Contribution.”

I have requested very similar data in the past, and would be happy to clarify any portion of my request. I can do so telephonically at 989-430-8669 or by e-mail at [lafaive@mackinac.org](mailto:lafaive@mackinac.org). I would be happy to provide examples of the documents I am requesting that have been provided by the Department in previous years, if you believe those examples would be helpful. I would also be happy to work with the Department to minimize the administrative burden associated with the request, so please do not hesitate to contact me if you believe I could clarify any questions you may have.

If the documents I have requested are not disclosable in their entirety, I request that you release all nonexempt portions of the documents that may be segregated and all parts of the documents that can be rendered disclosable by redaction. As to any portion of the documents that you withhold, ***please state with specificity the legal and factual basis for withholding such portion, as well as the nature of the information being withheld.***

If non-exempt material can be separated from exempt material, the Department is responsible for doing so. *Herald Co. Inc v Ann Arbor Public Schools*, 224 Mich App 266, 275 (1997). This includes identifying those records that are being withheld, or the nature of any information being withheld. *Id.* Specific citations to the precise portions of FOIA justifying an exemption are also required. MCL 15.235(5)(a)-(c); *Peterson v Charter Township of Shelby*, 2018 WL 2024578 (Mich App). Further, if no responsive documents exist for a particular portion of this request, please clearly identify which portions of this request have been denied for that reason.

Pursuant to MCL 15.234(1)(c), I respectfully request this data be provided to me in an electronic format. I would prefer that the documents I have requested be sent to me via PDF or the electronic records in a useable format, such as Excel. However, if that is not possible than I ask that they be sent to my alternative work address at: 1370 Saffron Circle, Traverse City, MI 49696.

Sincerely,

Michael LaFaive  
Senior Director of Fiscal Policy  
Mackinac Center for Public Policy  
Midland, MI

**EXHIBIT 4**

**EXHIBIT 4**

**EXHIBIT 4**

**LaFaive, Michael D.**

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**From:** LaFaive, Michael D.  
**Sent:** Thursday, November 19, 2020 10:23 AM  
**To:** 'Karen Wieber (MEDC)'  
**Cc:** Christin Armstrong (MEDC); Amy Lum (MEDC)  
**Subject:** Documents Attached  
**Attachments:** MEDC Documents for Clarification.pdf

Hi, Ms. Wieber:

Attached, please find example documents to clarify my request for the Fiscal Year 2019 Travel Budget, Fiscal Year 2019 PO Summary and the list of MEDC Procurement Contracts for 2019 and 2020.

If you have any further questions please do not hesitate to contact me via email, or on my cell at 989.430.8669. That number is good 24/7.

Sincerely,  
Mike

Document received by the MI Court of Claims.

EXHIBIT 5

EXHIBIT 5

EXHIBIT 5



**MICHIGAN ECONOMIC  
DEVELOPMENT CORPORATION**

February 1, 2021

Michael D. LaFaive  
1370 Saffron Circle  
Traverse City, MI 49696  
[LaFaive@Mackinac.org](mailto:LaFaive@Mackinac.org)

**Via E-Mail**

Dear Mr. LaFaive:

This written notice is issued in response to your email request dated November 6, 2020 to the Michigan Economic Development Corporation (MEDC), received November 9, 2020, for information under the Freedom of Information Act (FOIA), MCL 15.231 *et. seq.*

We are in receipt of your check number 39943 in the amount of \$432.97, and check number 40086 in the amount of \$279.65. Your request is granted in part and denied in part.

Documents responsive to your request are available as follows:

**- Freedom of Information Act Request – Travel Michigan/Pure Michigan**

After diligent search and inquiry, it has been determined that some of the information requested does not exist in the name you requested or in any other name reasonably known to the MEDC. Therefore your request is partially denied.

Your request for information is also denied in part because portions of the document are exempt from disclosure pursuant to Section 13(1)(a) of the FOIA, which exempts information of a personal nature that would constitute a clearly unwarranted invasion of an individual's privacy.

As to the partial denial of your request, pursuant to section 10 of the FOIA, you may do either of the following:

1. Appeal this decision, in writing, to Mark Burton, CEO, Michigan Economic Development Corporation, 300 North Washington Square, Lansing, Michigan 48913. Your written appeal must specifically state, using the word *appeal*, that it is an appeal of this decision and must specify the reasons you believe the denial should be reversed. Mr. Burton or his designee must respond to your appeal within 10 business days of its receipt. Under unusual circumstances, the time for response to your appeal may be extended by 10 business days.
2. File an action in circuit court to compel disclosure of the records. The action must be filed within 180 days after the date of the final determination to deny the request. If you prevail in such an action, the court is to award reasonable attorney fees, costs, and disbursements. Further, if the court finds the denial to be arbitrary and capricious, you may receive punitive damages in the amount of \$1,000.

As to the partial granting of your request, copies of the nonexempt documents are attached.

PURE  MICHIGAN®

Sincerely,

*Karen Wieber*

Karen Wieber  
MEDC FOIA Coordinator

Attachments



EXHIBIT 6

EXHIBIT 6

EXHIBIT 6

**LaFaive, Michael D.**

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**From:** LaFaive, Michael D.  
**Sent:** Tuesday, February 23, 2021 3:46 PM  
**To:** 'burtonm8@michigan.org'  
**Subject:** Mackinac Center Letter to Mark Burton

February 23, 2021

Mr. Mark A. Burton  
President and CEO  
Michigan Economic Development Corporation  
300 N Washington Square  
Lansing, MI 48913

Dear Mr. Burton:

My name is Michael LaFaive, and I am writing to ask for your help regarding the rejection of certain documents related to my Pure Michigan-specific FOIA request, which includes the failure of the Michigan Economic Development Corporation to follow proper case law related to such requests. I would be happy to discuss the matters below by phone if that would resolve this matter sooner.

By way of background, I sent a Freedom of Information Act request to the Michigan Economic Development Corporation on November 6, 2020. I was looking for documents that were generally related to the Pure Michigan program. I did not receive a number of them and I believe there is a violation.

Specifically, the MEDC failed to explain in its response to me precisely why part of my request was denied, which I find concerning given that my request specifically asked for denials to state: **“with specificity the legal and factual basis for withholding [information], as well as the nature of the information being withheld.”** Our original FOIA request contained this language, in bold, and yet after a nearly three-month wait for less than 70 pages of documents, the MEDC’s response to my FOIA failed to specify what was rejected or why. Here is quote from my November 6 FOIA request to your agency:

As to any portion of the documents that you withhold, *please state with specificity the legal and factual basis for withholding such portion, as well as the nature of the information being withheld.* If non-exempt material can be separated from exempt material, the Department is responsible for doing so. *Herald Co, Inc v Ann Arbor Public Schools*, 224 Mich App 266, 275 (1997). This includes identifying those records that are being withheld, or the nature of any information being withheld. *Id.* Specific citations to the precise portions of FOIA justifying an exemption are also required. MCL 15.235(5)(a)-(c); *Peterson v Charter Township of Shelby*, 2018 WL 2024578 (Mich Ct App). Further, if no responsive documents exist for a particular portion of this request, please clearly identify which portions of this request have been denied for that reason.

After comparing my original request to the MEDC’s official response I have identified the following items that were apparently denied.

- The most recent “Sole Source Justification” document involving D.K. Shifflet and Associates and the MEDC/MSF.

D.K. Shifflet & Associates was a no-bid contractor of the MEDC and provided economic data in the past. I have subsequently learned that this contractor is no longer providing such services, but that should not preclude the MEDC from sending the most recent document. As I am in possession of a previous "Sole Source Justification" type document, I know that such a document exists. At this point, however, I am more interested in such documents as might be related to the firm(s) hired to provide similar or the same services after D.K. Shifflet.

- Expenditure data for the 2019 and (if available) 2020 data provided by D.K. Shifflet for the MEDC.

I understand why this was not made available to me, as D.K. Shifflet no longer provides such information. On both items above, and on any licensing agreement, however, I would like this information for the contractor that replaced D.K. Shifflet in providing data used by the MEDC/Travel Michigan/SMARInsights in its analysis of tourism in Michigan. I have not yet learned the name of the new contractor(s), and the MEDC didn't volunteer this information in its partial denial of February 1. At this time, I would respectfully request that these documents be supplied to me for the contractor, if any, that was hired to replace D.K. Shifflet.

I received no documents associated with either of the following bullet points and no explanation as to why.

- Any Requests for Proposals issued by the MEDC/MSF for the purpose of locating and choosing a vendor to perform the Pure Michigan campaign insights research most recently performed by Strategic Marketing and Research Insights, whose agreement will be in effect after December 31, 2020. In the alternative, any e-mails indicating why a new RFP or contract for such services have not been let.
- Any single document that would identify a winning vendor for the RFP referenced immediately above. An example of such a document would be a "Request to Award Contract" memo, such as the one previously written by Lauren Branneman and sent to the MSF on September 26, 2017.

It is certainly possible that the existing contract for Strategic Marketing and Research Insights was extended and somehow didn't fall under my RFP or "Request to Award Contract" type of communication. I was, however, offered no explanation by the MEDC with respect to these requests. Had MEDC officials done so, I could have easily clarified in without the need to subject the Corporation to a subsequent FOIA.

Could I please trouble you to ask the proper MEDC officials to provide me with any contract or contract extension for the contractor who is performing the same role still or previously performed by SMARInsights?

As with the aforementioned bullet points, I received no explanation for why I did not receive requested records relating to the following portions of my request:

- Any estimate of the "percentage of State taxes generated for every dollar spent" provided to Strategic Marketing and Research Insights by Travel Michigan/MEDC/MSF for its most recent (2020) report. Previously, this information could be found in a 2017 Michigan Office of the Auditor General letter to two lawmakers explaining that it is the MEDC that makes this information available to its contractor (then, Longwoods International).
- The responses received by Strategic Marketing and Research Insights in the course of its research for the MEDC/MSF for their most recent (2020) report "2019 Pure Michigan Advertising Effectiveness" study for questions Q4 and Q6-Q19.
- The input assumption worksheets used by Tourism Economics and any related "direct, indirect and induced impacts" output produced directly from its modeling effort for the MEDC/MSF Strategic Marketing and Research Insights report "2019 Michigan Ad Effectiveness Study," and/or its "Economic Impact of Advertising-Generated Tourism in Michigan – 2018" report.

With respect to the bullet immediately above, I also added: just “the input worksheets and related output. However, if Tourism Economics has not provided you with the above referenced worksheets/direct output, I would like to politely request that the MEDC ask Tourism Economics for these items for the state and Mackinac Center’s behalf.”

It is my hope that you will be able to assist me in obtaining this information. While I realize that the law does not compel the state to create any documents for me or necessarily ask a contractor to do so, I believe it is in the interest of government transparency that this information be made available. As such, I would very much appreciate it if MEDC could arrange for me access to such documents. The input assumption worksheet alone would be useful.

As you may be aware, it has been the Mackinac Center’s long-running desire to obtain an understanding of how the state generates its return-on-investment claims. The information I have requested will help provide not only the Center, but also the citizens of Michigan, with a deeper understanding of precisely how Pure Michigan’s ROI claims are generated.

Mr. Burton, my original request took nearly three months to process. It is my hope that — with your prompt attention — I can at least receive specific explanations as to why I was denied certain information so that I will be able to submit another formal request with more precise language. That said, I would more than welcome the disclosure of records from MEDC without the need to burden its staff with a second request, and I am more than happy to resolve this matter informally if it would lead to prompt disclosure.

I’m happy to help clarify this letter, or any portion of my request via a phone call or even a personal visit with you or a designee. Thank you in advance for considering my request.

Sincerely,

Michael LaFaive  
Senior Director of Fiscal Policy  
Mackinac Center for Public Policy

EXHIBIT 7

EXHIBIT 7

EXHIBIT 7

Otie,

Many thanks for this. It's a very helpful explanation.

It is my hope that I might be able to ask one more follow-up question or so, particularly with regard to part of your response "2."

On another note, because of your communication with me I had an editor's note added at the top of my blog today recognizing that the MEDC did get back to us on part of our request.

Thank you,  
Mike

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**From:** Otie McKinley (MEDC) <[mckinleyo@michigan.org](mailto:mckinleyo@michigan.org)>

**Sent:** Tuesday, March 16, 2021 4:28 PM

**To:** LaFaive, Michael D. <[LaFaive@Mackinac.org](mailto:LaFaive@Mackinac.org)>

**Subject:** FOIA responsive documents

Good afternoon Michael –

If you haven't already received the documents in response to your most recent FOIA, you should expect them shortly. I did want to clarify a couple of things.

1. Your request for RFPs issued by the MEDC/MSF for the purpose of locating and choosing a vendor to perform the Pure Michigan campaign insights research request do not exist. Because there was no campaign in 2020 to measure effectiveness off, as a result of having no appropriated budget, there was also not a need for an effectiveness study during that timeframe.
2. Regarding your request for any estimate of the "percentage of State taxes generated for every dollar spent" provided to Strategic Marketing and Research Insights by Travel Michigan/MEDC/MSF for its most recent (2020) report: this is provided by Tourism Economics directly to SMARInsights, and while we have a basic understanding of their method for estimating the percentage used, we do not have access to the working documents they produced.
3. Finally, in regards to your inquiry about the replacement for DK Shifflet. While we do have access to an online database with travel information through the Longwoods Travel USA dataset, as indicated by responsive documents you received (or will,) we did not provide any such data to SMARInsights for their study. SMARInsights used data garnered from their own survey – not data provided by us or related to this Longwoods database. So that is not a dataset we can provide.

Thank you and have a great evening.

Otie McKinley

Media and Communications Manager

**Michigan Economic Development Corporation & Travel Michigan**

300 N. Washington Square | Lansing, MI 48913

Mobile: 517.930.8049

[mckinleyo@michigan.org](mailto:mckinleyo@michigan.org)

Document received by the MI Court of Claims.

EXHIBIT 8

EXHIBIT 8

EXHIBIT 8

**LaFaive, Michael D.**

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**From:** LaFaive, Michael D.  
**Sent:** Wednesday, March 31, 2021 3:41 PM  
**To:** Otie McKinley (MEDC)  
**Cc:** LaFaive, Michael D.  
**Subject:** FW: FOIA responsive documents

Hi, Otie:

I'm just writing back to follow up on our discussion regarding your letter (Email) of March 16, and in particular, answer number two. It involves Tourism Economics.

The Mackinac Center has repeatedly and over many years attempted to obtain information on the modeling efforts of Tourism Economics. We know from past conversations with an MEDC contractor that Tourism Economics contributes to the final tax return on investment calculation for the Pure Michigan program.

That is why I asked for the estimate of the "percentage of state taxes generated for every dollar spent" for the Pure Michigan program in my November 2020 Freedom of Information Act request and for:

The input assumption worksheets used by Tourism Economics and any related "direct, indirect and induced impacts" output produced directly from its modeling effort for the MEDC/MSF Strategic Marketing and Research Insights report "2019 Michigan Ad Effectiveness Study," and/or its "Economic Impact of Advertising-Generated Tourism in Michigan — 2018" report.

As you know, the first response that I received from the MEDC on Feb. 1, 2021, denied my request and offered no explanation. That is why I subsequently wrote a letter to the MEDC's president asking for help. The initial nonresponsive response I received to questions involving Tourism Economics was particularly unhelpful.

I recognized in my November 2020 FOIA that it was possible that Tourism Economics had not provided the MEDC with any of the inputs (to its modeling) that I had requested. That's why I wrote, **"I would like to politely request that the MEDC ask Tourism Economics for these items for the state and Mackinac Center's behalf."**

Part of the MEDC's response to my letter (your email of March 16) was helpful in some ways, but it completely failed to address the subject of my request for the input assumption worksheets (evidence of assumptions used in the model), etc., that I detail in the offset paragraph, above. There's no mention at all of it.

I see that you did mention that the "percentage of state taxes generated for every dollar spent" was provided directly to SMARInsights by Tourism Economics. That's good news, because we can lump these two requests into one for today's request for assistance:

**Would the MEDC please contact Tourism Economics and obtain for me both the "percentage of state taxes generated for every dollar spent" and any input assumption worksheets and methodological explanation of its modeling efforts that contribute to the final ROI for the Pure Michigan program as reported by SMARInsights in its "2019 Michigan Ad Effectiveness Study"?**

In your March 16 email you note in reference to the percentage figure, "we do not have access to the working documents they produced," but the state's contract with them suggests that the work product of the contractor is "the sole property of the MSF. ..." That suggests to me the state has a legal claim on it and can request that it be provided.



The Mackinac Center has been very transparent about its desire to see precisely how the Pure Michigan ROI claims are generated. The Tourism Economics contribution is clearly key to these claims. That is why I am asking your assistance. We want to know more and believe the public deserves to know more, too.

I would ask Tourism Economics for its assumptions/methodology myself, however, the MEDC's contract with them may prohibit the firm from disclosing (with some exceptions) "economic development analyses, computer programs, databases" and more "without the prior written consent of the MSF or the MEDC. ..."

Thank you for your time and attention. I deeply appreciate your willingness to try and help me obtain this information and look forward to your response.

Sincerely,  
Mike

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**From:** LaFaive, Michael D.  
**Sent:** Tuesday, March 16, 2021 5:02 PM  
**To:** 'Otie McKinley (MEDC)' <mckinleyo@michigan.org>  
**Subject:** RE: FOIA responsive documents

Otie,

Thanks. I've got to run now for a meeting across town but will follow up as soon as possible.

Talk to you soon.

--Mike

---

**From:** Otie McKinley (MEDC) <mckinleyo@michigan.org>  
**Sent:** Tuesday, March 16, 2021 5:00 PM  
**To:** LaFaive, Michael D. <LaFaive@Mackinac.org>  
**Subject:** RE: FOIA responsive documents

Greetings –

Absolutely, what can I help you with? I can't promise how quickly I can get you an answer, but I will do my best. Thank you for the editor's note as well. We try very hard to make sure we are being as responsive as possible.

Thanks!

Otie McKinley  
Media and Communications Manager  
**Michigan Economic Development Corporation & Travel Michigan**  
300 N. Washington Square | Lansing, MI 48913  
Mobile: 517.930.8049  
[mckinleyo@michigan.org](mailto:mckinleyo@michigan.org)

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**From:** LaFaive, Michael D. <LaFaive@Mackinac.org>  
**Sent:** Tuesday, March 16, 2021 4:56 PM  
**To:** Otie McKinley (MEDC) <mckinleyo@michigan.org>  
**Subject:** RE: FOIA responsive documents

Otie,

Many thanks for this. It's a very helpful explanation.

It is my hope that I might be able to ask one more follow-up question or so, particularly with regard to part of your response "2."

On another note, because of your communication with me I had an editor's note added at the top of my blog today recognizing that the MEDC did get back to us on part of our request.

Thank you,  
Mike

---

**From:** Otie McKinley (MEDC) <mckinleyo@michigan.org>

**Sent:** Tuesday, March 16, 2021 4:28 PM

**To:** LaFaive, Michael D. <LaFaive@Mackinac.org>

**Subject:** FOIA responsive documents

Good afternoon Michael –

If you haven't already received the documents in response to your most recent FOIA, you should expect them shortly. I did want to clarify a couple of things.

1. Your request for RFPs issued by the MEDC/MSF for the purpose of locating and choosing a vendor to perform the Pure Michigan campaign insights research request do not exist. Because there was no campaign in 2020 to measure effectiveness off, as a result of having no appropriated budget, there was also not a need for an effectiveness study during that timeframe.
2. Regarding your request for any estimate of the "percentage of State taxes generated for every dollar spent" provided to Strategic Marketing and Research Insights by Travel Michigan/MEDC/MSF for its most recent (2020) report: this is provided by Tourism Economics directly to SMARInsights, and while we have a basic understanding of their method for estimating the percentage used, we do not have access to the working documents they produced.
3. Finally, in regards to your inquiry about the replacement for DK Shifflet. While we do have access to an online database with travel information through the Longwoods Travel USA dataset, as indicated by responsive documents you received (or will,) we did not provide any such data to SMARInsights for their study. SMARInsights used data garnered from their own survey – not data provided by us or related to this Longwoods database. So that is not a dataset we can provide.

Thank you and have a great evening.

Otie McKinley

Media and Communications Manager

**Michigan Economic Development Corporation & Travel Michigan**

300 N. Washington Square | Lansing, MI 48913

Mobile: 517.930.8049

[mckinleyo@michigan.org](mailto:mckinleyo@michigan.org)

Document received by the MI Court of Claims.

EXHIBIT 9

EXHIBIT 9

EXHIBIT 9

**LaFaive, Michael D.**

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**From:** Otie McKinley (MEDC) <mckinleyo@michigan.org>  
**Sent:** Friday, May 28, 2021 1:01 PM  
**To:** LaFaive, Michael D.  
**Subject:** FOIA request

Good afternoon Michael –

You have likely received the response to your FOIA request. Chris Pike from Oxford Economics, [cpike@oxfordeconomics.com](mailto:cpike@oxfordeconomics.com), would be someone you might want to reach out to.

Thank you, and I hope you have a fantastic Memorial Day weekend.

*Otie McKinley*

Media and Communications Manager

**Michigan Economic Development Corporation & Travel Michigan**

300 N. Washington Square | Lansing, MI 48913

Mobile: 517.930.8049

[mckinleyo@michigan.org](mailto:mckinleyo@michigan.org)

**EXHIBIT 10**

**EXHIBIT 10**

**EXHIBIT 10**



# 2019 Advertising Effectiveness & ROI

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January 2020

# Contents

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# Background & Objectives

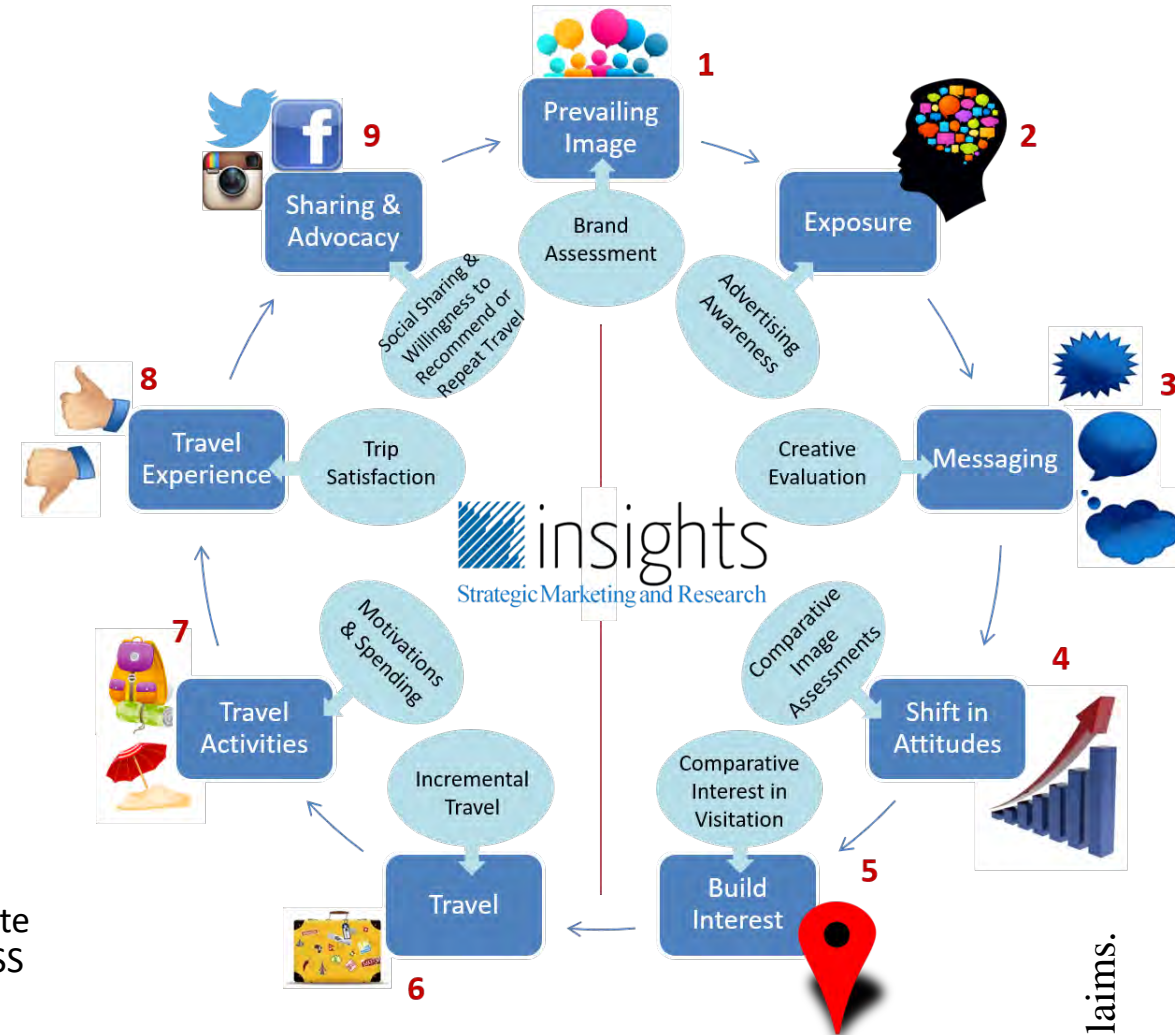
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- As the agency responsible for influencing Michigan leisure travel and spending from out-of-state consumers, in 2019 the Michigan Economic Development Corporation (MEDC) continued to run the Pure Michigan campaign regionally and nationally.
- In order to be accountable for the resources invested in these efforts, MEDC has again partnered with Strategic Marketing & Research Insights (SMARInsights) to measure the reach and impact of its marketing.
- The specific objectives of this research are to:
  - Measure the reach of the advertising among targeted markets;
  - Evaluate the efficiency of the marketing through SMARInsights' destination marketing organization (DMO) cost-per-aware household benchmarking;
  - Understand the overlap and potential impact of multiple media;
  - Determine the ability of the creative to communicate desired messages, again using SMARInsights' benchmarking;
  - Assess the ability of the advertising to improve the image of the state, motivate interest in visiting, and increase visitation;
  - Calculate the number of influenced trips, visitor spending, and return on investment of the campaign; and
  - Forward insights into future refinement of the marketing.



# Methodology

- SMARInsights' ad effectiveness methodology is designed to assess advertising impact at all stages of the travel cycle, from prevailing image through social sharing. This report includes a review of advertising impact at each stage.
- We use an online survey so that respondents can view the actual advertising in order to gauge awareness and reaction to the creative. National sample vendors provided a survey link to potential respondents.
- SMARInsights' methodology for calculating influenced trips is considered conservative as it only accounts for additional travel generated by the paid media beyond that which would come to Michigan without any advertising. And not all trips can be considered influenced. For that reason, this evaluation does not include the following types of trips:
  - Business travel
  - Visiting friends and relatives
  - Annual visitors – those who have visited Michigan five or more times in the last five years
  - Property owners – those who own second homes or condos in Michigan
- In order to qualify for the survey, respondents must be travel decision makers who regularly take overnight leisure trips of at least 50 miles from home.
- Data collection was conducted in late December 2019/early January 2020 to evaluate travel influenced by the 2019 campaign. Upon completion of data collection, an SPSS dataset was prepared for analysis. A copy of the questionnaire is included in the Appendix of this report.



# Methodology

- MEDC placed media in three market groups: **Regional**, **Feeder**, and **National**.
- While MEDC currently considers regional/feeder markets as a single group, prior research has included results for each group. For tracking purposes regional/feeder markets are again considered separately in this report.
- It should also be noted that Louisville and Pittsburgh are new regional target markets in 2019.
- The DMAs included in the market groups are listed in the table below and are shown in the map to the right.

DMAs in Market Groups		Completed Surveys
Regional	Feeder	
Chicago	St. Louis	1,761
Cincinnati	Fort Wayne	
Milwaukee	Green Bay	1,149
Indianapolis	South Bend	
Cleveland	Toledo	1,002
Columbus	Minneapolis	
Dayton	Southern Ontario	3,912
Louisville		
Pittsburgh		
<b>Total</b>		



Regional Markets

Feeder Markets

# Year over Year Comparisons

---

- In 2019 there was a significant shift in seasonal media spend.
- Prior to this year, the national media spend was focused solely on Spring and Summer attempting to influence travel in these primary travel periods.
- In 2019 a national Fall media strategy was undertaken for the first time. This was a shift in strategy which involved the movement of marketing resources from the earlier periods.
- Much of this report focuses upon the overall campaign strategy and thereby includes the fall campaign and spending.
- However, for the purposes of a more *apples to apples* comparison of this year to the traditional approach in the past, we have provided a review of the impact of this campaign in terms of awareness, incremental travel and ROI that only considers the spring and summer efforts.

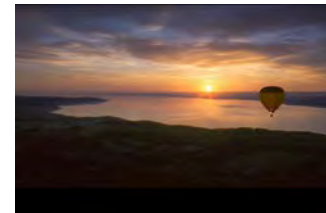
# Campaign Overview

- MEDC invested \$16.1 million in the 2019 Pure Michigan campaign, which includes TV/OTV, digital, radio, and outdoor advertising.
- The overall investment is similar year-over-year.
- Overall, MEDC reduced spending on TV/OTV and radio advertising, but increased spending on digital and outdoor advertising.
- It should also be noted that the regional TV/OTV and digital investments were increased significantly.
- Print advertising was removed in 2019.

2018	TV/OTV	Print	Digital	Radio	Outdoor	Total
Regional	\$196,246	\$106,000	\$3,455,114	\$826,395	\$377,547	\$4,961,302
Feeder	\$639,000	\$0	\$0	\$247,241	\$51,290	\$937,531
National	\$10,600,000	\$0	\$0	\$0	\$0	\$10,600,000
Total	\$11,435,246	\$106,000	\$3,455,114	\$1,073,636	\$428,837	\$16,498,833
2019	TV/OTV	Print	Digital	Radio	Outdoor	Total
Regional	\$762,926	\$0	\$6,749,350	\$792,424	\$638,204	\$8,942,904
Feeder	\$111,418	\$0	\$0	\$69,668	\$124,941	\$306,027
National	\$6,900,000	\$0	\$0	\$0	\$0	\$6,900,000
Total	\$7,774,344	\$0	\$6,749,350	\$862,092	\$763,145	\$16,148,931
% Change	TV/OTV	Print	Digital	Radio	Outdoor	Total
Regional	289%	-100%	95%	-4%	69%	80%
Feeder	-83%			-72%	144%	-67%
National	-35%					-35%
Total	-32%	-100%	95%	-20%	78%	-2%

## Sample of 2019 Creative

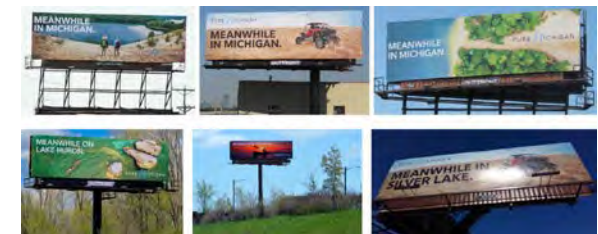
### TV/OTV



### Digital



### Outdoor



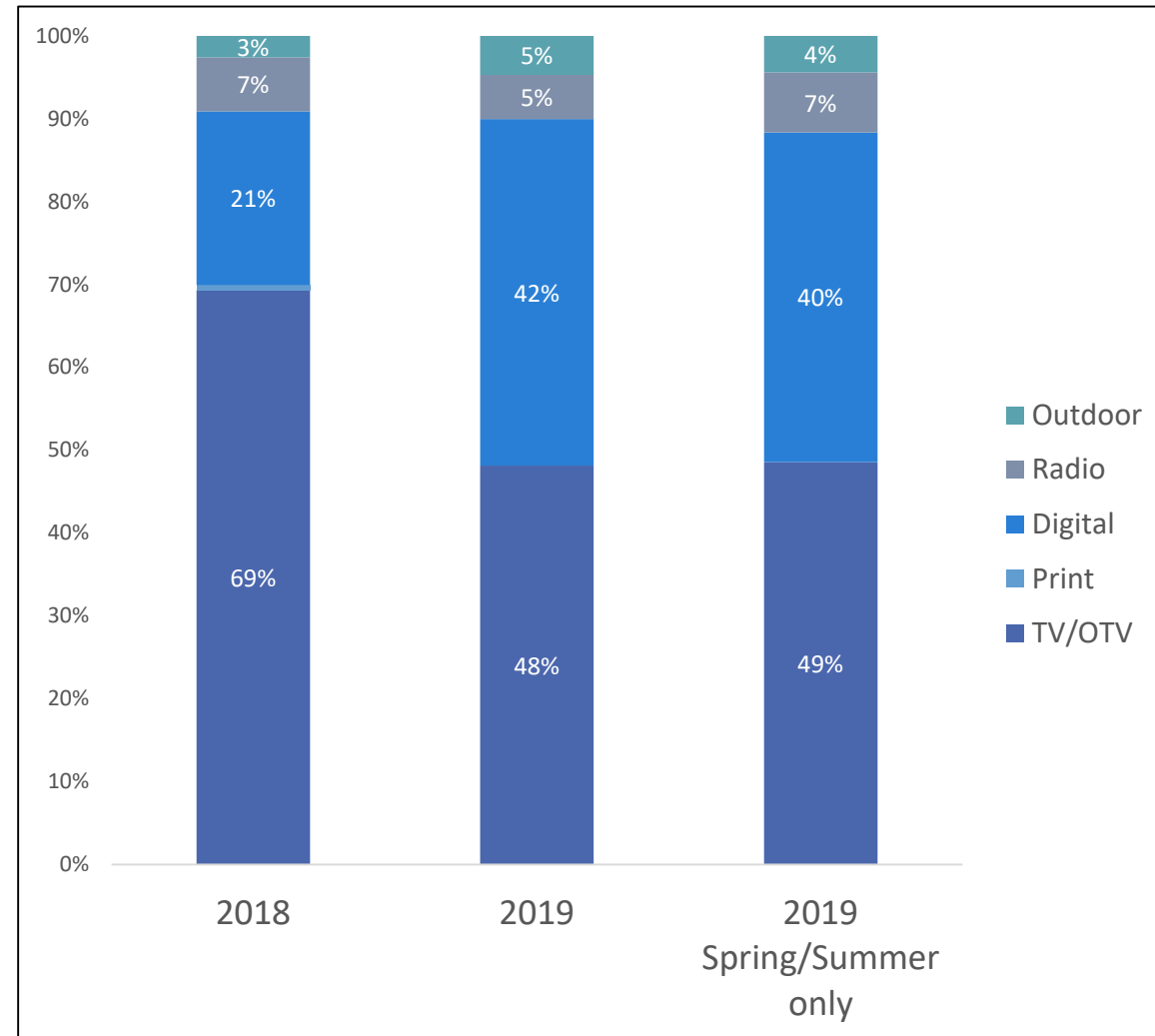
# Year over Year Spring/Summer Comparison

- In order to provide a direct comparison to 2018 (which included no fall investment), MEDC invested \$11.9 million in the 2019 Pure Michigan campaign.
- The overall investment is down 28% year-over-year.
- MEDC reduced spending on feeder and national market TV/OTV and regional/feeder radio advertising, but increased spending on regional digital and regional/feeder outdoor advertising.

2018	TV/OTV	Print	Digital	Radio	Outdoor	Total
Regional	\$196,246	\$106,000	\$3,455,114	\$826,395	\$377,547	\$4,961,302
Feeder	\$639,000	\$0	\$0	\$247,241	\$51,290	\$937,531
National	\$10,600,000	\$0	\$0	\$0	\$0	\$10,600,000
Total	\$11,435,246	\$106,000	\$3,455,114	\$1,073,636	\$428,837	\$16,498,833
2019	TV/OTV	Print	Digital	Radio	Outdoor	Total
Regional	\$762,926	\$0	\$4,724,128	\$792,424	\$428,465	\$6,707,943
Feeder	\$111,418	\$0	\$0	\$69,668	\$95,901	\$276,987
National	\$4,900,350	\$0	\$0	\$0	\$0	\$4,900,350
Total	\$5,774,694	\$0	\$4,724,128	\$862,092	\$524,366	\$11,885,280
% Change	TV/OTV	Print	Digital	Radio	Outdoor	Total
Regional	289%	-100%	37%	-4%	13%	35%
Feeder	-83%			-72%	87%	-70%
National	-54%					-54%
Total	-50%	-100%	37%	-20%	22%	-28%

# Distribution of Advertising Investment by Medium

- A notable change in the media plan from year-to-year is allocating a smaller percentage of the budget to TV/OTV advertising in favor of digital advertising.
- The 2019 distribution does not change when omitting the fall advertising.



# Insights – Results Summary & Strategic Considerations

---

- The Pure Michigan advertising continues to influence Michigan leisure trips and generate a positive return on investment. The 2019 advertising influenced about 1.9 million Michigan trips which resulted in about \$142 million in state tax revenue and a return of \$8.79 in state taxes for each \$1 invested. The 2018 advertising influenced about 2.1 million Michigan trips which resulted in about \$153 million in state tax revenue and a return of \$9.28 in state taxes for each \$1 invested.
- When considering only the spring/summer campaign and associated investment from the 2019 ROI calculation to provide a more apples to apples comparison to 2018 when no fall ads ran, the 2019 advertising influenced about 1.8 million Michigan trips which resulted in about \$136 million in state tax revenue and a return of \$11.43 in state taxes for each \$1 invested. While removing the fall advertising reduces the number of influenced trips and tax revenue, ROI increases when the \$4.3 million fall investment is not counted.
- The level of advertising influence suggests that if the budget remains cut there will be a gradual decline in Michigan leisure trips in the coming years.
- Not only did the 2019 advertising influence Michigan trips and produce a positive tax ROI, but the ads also gave visitors trip ideas which led to more active, longer, better trips with higher spending and more social media advocacy.
- The advertising also continues to receive some of the strongest evaluative ratings that SMARInsights has seen in the industry. In fact, the ad ratings improved compared to 2018, driven by the addition of creative tested such as the nighttime ad “Dark Sky” and the winter ad “Facts.” These ads increased the depth of appeal of an already exemplary campaign.

# Insights – Results Summary & Strategic Considerations

---

- While the overall 2019 results are positive, there was some slippage compared to 2018 that warrants some tactical consideration:
  - MEDC increased the regional digital advertising investment in 2019 to \$6.7 million, up from \$3.5 million in 2018. While this resulted in digital ad awareness growing in the regional markets from 45% to 49%, it did not lead to an overall ad awareness gain.
  - Overall, the 2019 advertising generated 53% awareness, which equates to about 49 million ad-aware households. Again, ad awareness did not grow compared to 2018 (55% awareness & 51 million ad-aware households). Awareness in the regional markets is near saturation, so additional ad dollars could be better spent in other markets/on other media.
  - SMARInsights has recently observed awareness declines for many DMOs in the face of larger or equivalent investments. Media fragmentation resulting from an explosion of content, outlets, streaming services, and cord cutting has eliminated the shared viewing experience and has made it more of a challenge to reach a broad audience with a traditional network or cable media buy. The positive side of this is that media channels like addressable/connected TV and digital banners are highly targetable, which can mean lower reach but greater impact.
  - The omission of print advertising led to less media overlap (awareness of ads in multiple media) in the regional markets and a dip in the level of ad-influenced travel in these markets. SMARInsights consistently observes for MEDC and the industry generally that advertising impact grows as consumers are exposed to ads in multiple media. This again highlights the opportunity to re-allocate some of the regional digital advertising dollars to other media like print with the goal of generating more media overlap.
  - Reducing the national TV/OTV investment by 35% led to less ad-influenced trips from this market – and caused overall ad-influenced trips to decline. There is an opportunity to invest more in the national markets, perhaps including other media in addition to TV/OTV. The aim would be to increase awareness nationally, while also exposing national market consumers to multiple messages in multiple media and generating more interest in Michigan travel.
























# Insights – ROI Calculation





	2017	2018	2019	Insights	2019 Spring/Summer
Target HHs	92,807,522	92,807,522	93,271,560	The target household base was adjusted for population growth and change in leisure travel incidence.	93,271,560
Ad Awareness	57%	55%	53%	The 2019 advertising generated 53% awareness, reaching about 49 million households. The additional digital advertising investment in the regional markets did not lead to an overall awareness gain. When fall advertising is omitted, awareness drops one percentage point to 52%.	52%
Ad-Aware HHs	52,531,170	50,815,461	49,333,307		48,393,940
Incremental Travel	2.7%	3.1%	2.8%	The advertising continues to influence Michigan travel. The travel increment dipped slightly but is on par with the achieved in 2017. The overall decline is driven by declines in the regional and national markets. The 2019 increment drops further to 2.6% when the fall advertising is omitted.	2.6%
Incremental Trips	1,404,485	1,594,373	1,387,450		1,273,355
Incremental Repeat Trips	608,203	535,207	528,401	The 2019 advertising influenced about 1.9 million Michigan trips, down from about 2.1 million trips in 2018. The figure further drops to 1.8 million trips when the 2019 fall advertising is not counted.	560,037
Total Ad-Influenced Trips	2,012,688	2,129,580	1,915,851		1,833,391
Avg. Ad-Aware Visitor Spending	\$1,047	\$1,194	\$1,207	The 2019 advertising influenced about \$2.3 billion in visitor spending and about \$142 million in state tax revenue, both down compared to 2018. When removing the fall 2019 advertising, ad-influenced visitor spending and tax revenue are about \$2.2 billion and \$136 million respectively.	\$1,206
Ad-Influenced Spending	\$2,108,049,799	\$2,543,520,534	\$2,312,038,031		\$2,211,617,180
*State Taxes Generated	\$147,563,486	\$153,119,936	\$141,959,135		\$135,793,295
Media Spending	\$16,423,102	\$16,498,833	\$16,148,931	The 2019 advertising returned \$8.79 in state tax revenue for each \$1 invested – a slight decline compared to the \$9.28 tax ROI generated in 2018. But when the \$4.3 million fall investment is not counted the tax ROI jumps to \$11.43.	\$11,885,280
Tax ROI	\$8.99	\$9.28	\$8.79		\$11.43

\* The direct state tax rate used in 2019 is 6.14%. The direct state tax rate used in 2018 was 6.02%. The tax rate was revised based on Tourism Economics' analysis of ad-influenced spending by industry category and the associated direct tax rates of each.

# Insights – Performance Scorecard

Measure	2017	2018	2019	SMARInsights Benchmarks for State DMO Campaigns
Average of all ad communication ratings	4.2 	4.1 	4.3 	4.2 – Top 10% rating
Ad Impact Rating: Makes me want to visit Michigan	3.9 	3.8 	4.0 	4.0 – Top 10% rating
Ad Impact Rating: Makes me want to learn more about things to see and do in Michigan	3.9 	3.9 	4.0 	4.0 – Top 10% rating
Overall cost per aware household	\$0.31 	\$0.32 	\$0.33 	\$0.48 – Average CPH
National cost per aware household	\$0.24 	\$0.25 	\$0.17 	
Feeder cost per aware household	\$0.32 	\$0.30 	\$0.10 	\$0.28 – Average CPH
Regional cost per aware household	\$0.88 	\$0.93 	\$1.50 	\$0.40 – Average CPH

**Performance Measures**

-  Above or on par with benchmark
-  0-25% below benchmark
-  26%-50% below benchmark
-  51% or more below benchmark

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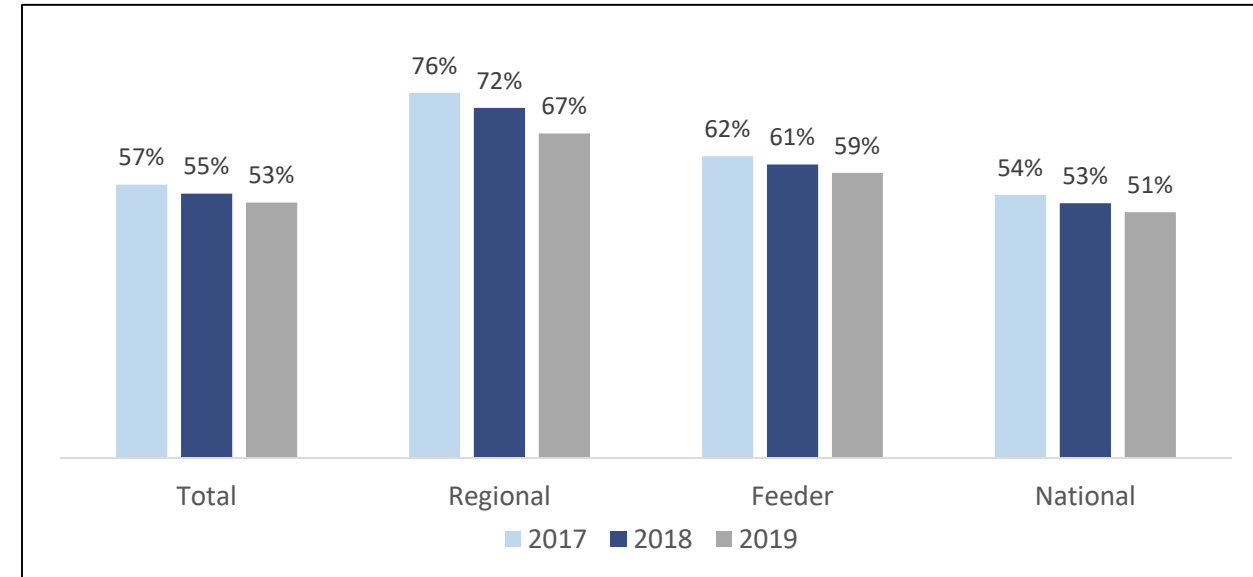


# Advertising Recall

Review of Michigan advertising recall and the efficiency of the media buy

# Advertising Recall

- The 2019 MEDC advertising campaign generated 53% awareness, equating to about 49 million ad-aware households.
- Total ad awareness declined slightly (not statistically significantly) from year-to-year (55% to 53%). Awareness also shows a slight decline in the feeder and national markets. The regional awareness decline is sharper, which is important to note given the significant increase in digital ad spending in this market. The reader will see later that digital ad awareness did increase in the regional markets, but not enough to result in an overall awareness gain.
- It should be noted here that SMARInsights has observed many DMOs experiencing ad awareness declines in the face of larger or equivalent investments. Cord cutting and a myriad of streaming services have essentially eliminated the shared viewing experience and have made it more of a challenge to reach a broad audience. The positive side of this is that media channels like digital banners and addressable/connected TV promise to be highly targetable, which can mean lower reach but greater impact. SMARInsights is monitoring the situation case by case, but currently it is clear that building advertising awareness requires more than just more media dollars.
- Overall, MEDC spent \$0.33 to reach a household with the 2019 advertising, which is on par with the prior two years. Compared to the benchmark for a similar campaign (state DMO, budget of \$10 million or more), the 2019 MEDC media buy is more efficient than average.



	2017 Total	2018 Total	2019 Total
Recall	57%	55%	53%
Aware HHs	52,531,170	50,815,461	49,333,307
Media Spending	\$16,423,102	\$16,598,833	\$16,148,931
<b>Cost per Aware HH</b>	<b>\$0.31</b>	<b>\$0.32</b>	<b>\$0.33</b>



# Efficiency of the Advertising

- The regional markets continue to have relatively high awareness compared to the other markets, but the media buy is less efficient than the other markets – and less efficient than the industry benchmark for similar campaigns.
- It should be noted that Louisville and Pittsburgh were added as regional markets, so the quantity of ad-aware households increased despite the awareness percentage decline. The new markets also contribute to the loss in efficiency regionally, as it takes time to build awareness.
- The feeder and national media buys beat the industry benchmark for cost per aware household.
- With awareness levels near saturation in the regional markets (very few campaigns reach more than 7 in 10 consumers), MEDC should consider moving some regional funds to the feeder and national markets to build awareness and ad impact there.

	2017 Regional	2018 Regional	2019 Regional
Recall	76%	72%	67%
Aware HHs	5,562,101	5,331,491	5,956,099
Media Spending	\$4,890,613	\$4,961,302	\$8,942,904
<b>Cost per Aware HH</b>	<b>\$0.88</b>	<b>\$0.93</b>	<b>\$1.50</b>

SMARInsights' medium budget benchmark:  
\$0.40 per aware household

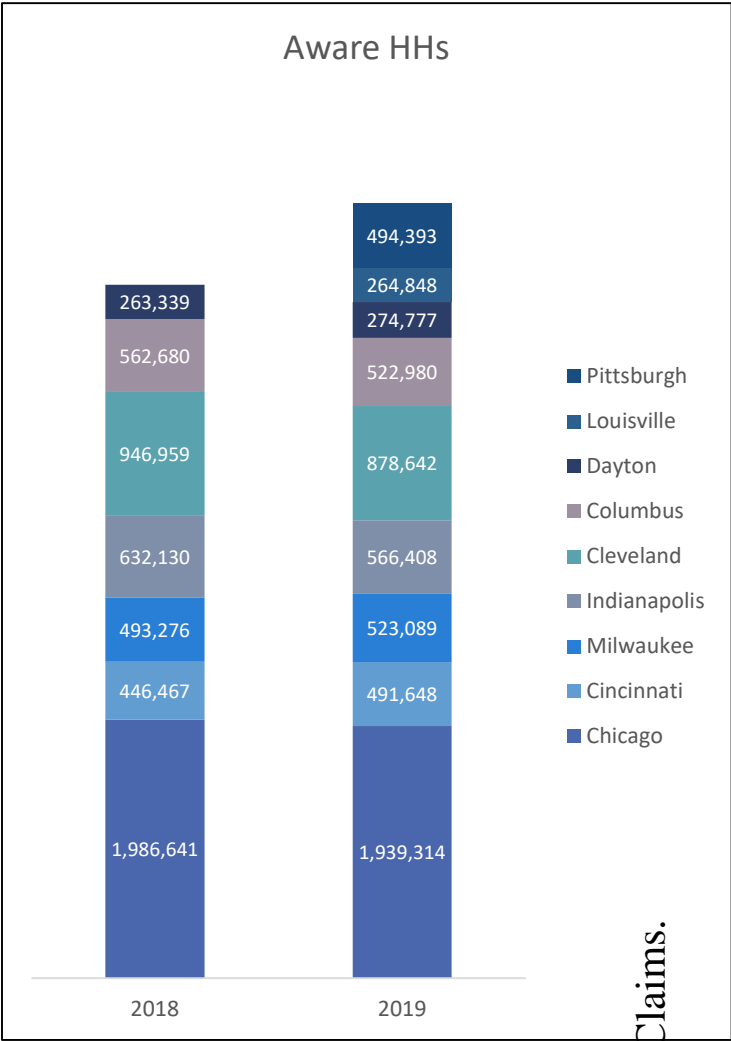
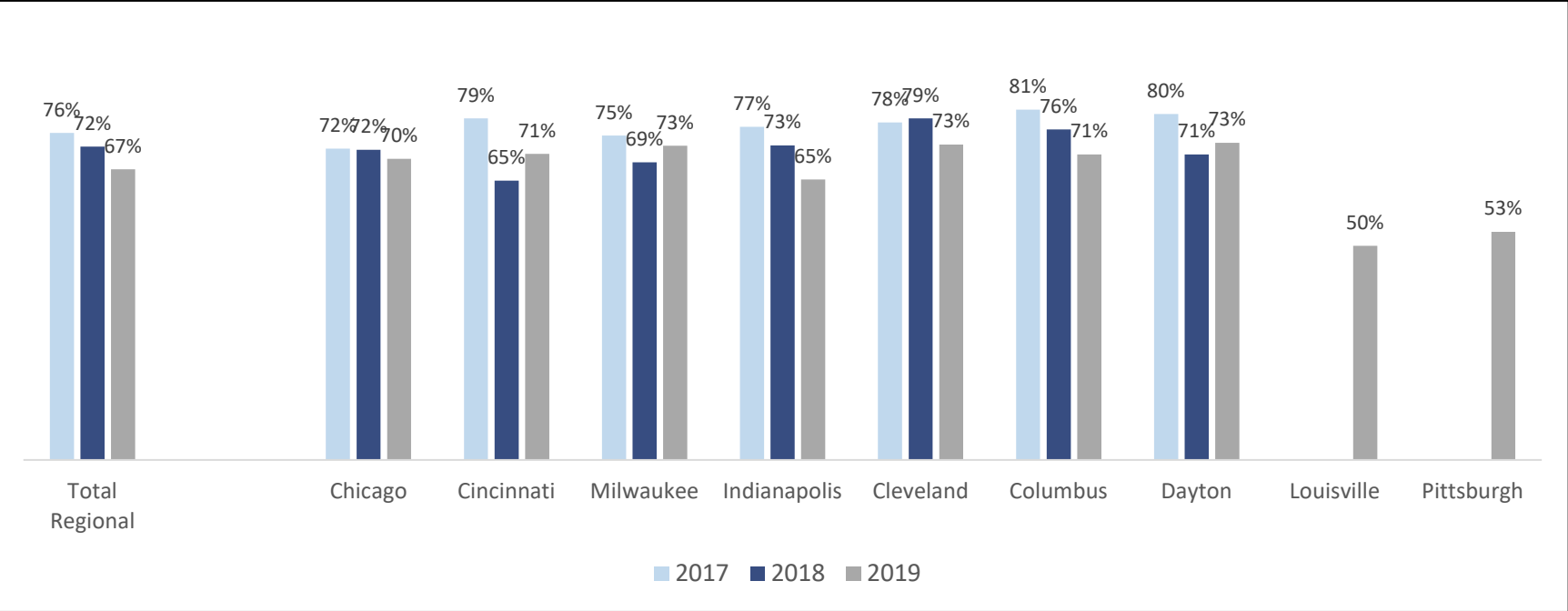
	2017 Feeder	2018 Feeder	2019 Feeder
Recall	62%	61%	59%
Aware HHs	3,180,890	3,094,835	3,019,351
Media Spending	\$1,032,489	\$937,531	\$306,027
<b>Cost per Aware HH</b>	<b>\$0.32</b>	<b>\$0.30</b>	<b>\$0.10</b>

SMARInsights' small budget benchmark:  
\$0.28 per aware household

	2017 National	2018 National	2019 National
Recall	54%	53%	51%
Aware HHs	43,788,179	42,389,135	40,357,858
Media Spending	\$10,500,000	\$10,600,000	\$6,900,000
<b>Cost per Aware HH</b>	<b>\$0.24</b>	<b>\$0.25</b>	<b>\$0.17</b>

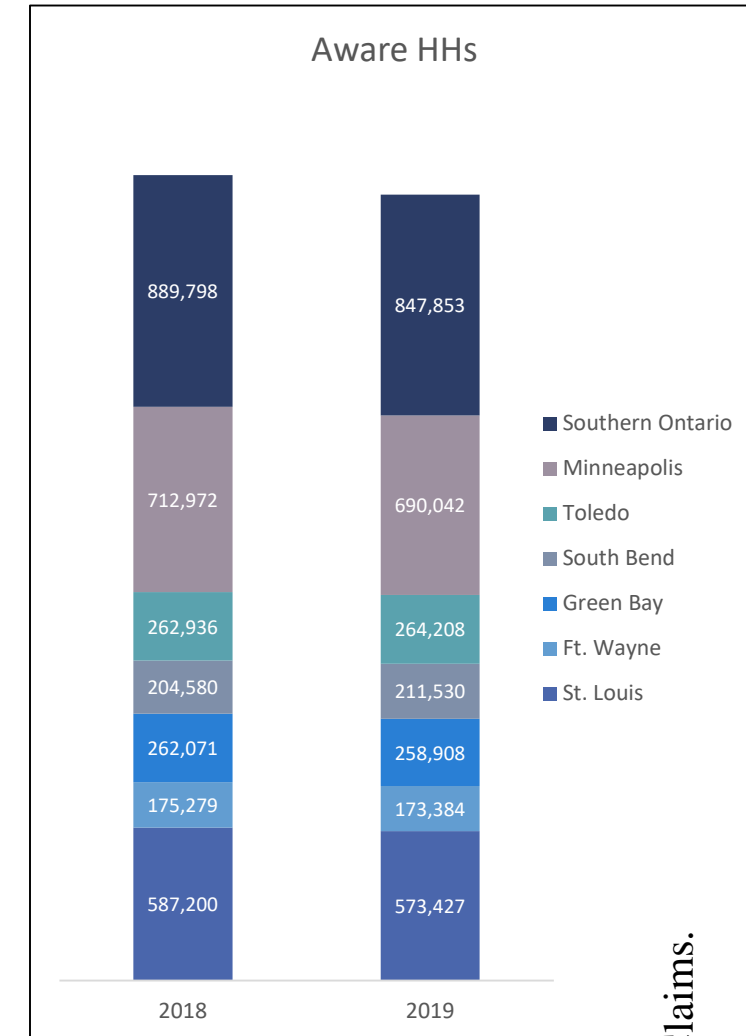
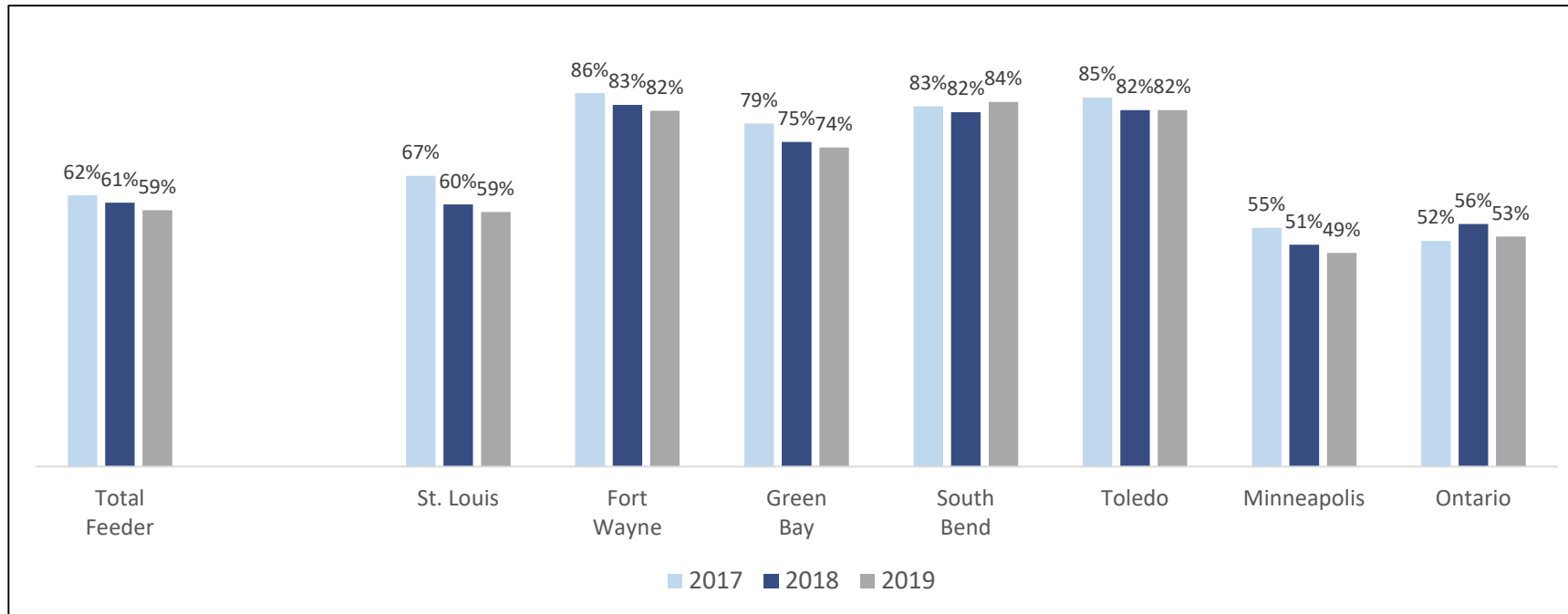
SMARInsights' large budget benchmark:  
\$0.48 per aware household

# Regional Markets Advertising Recall



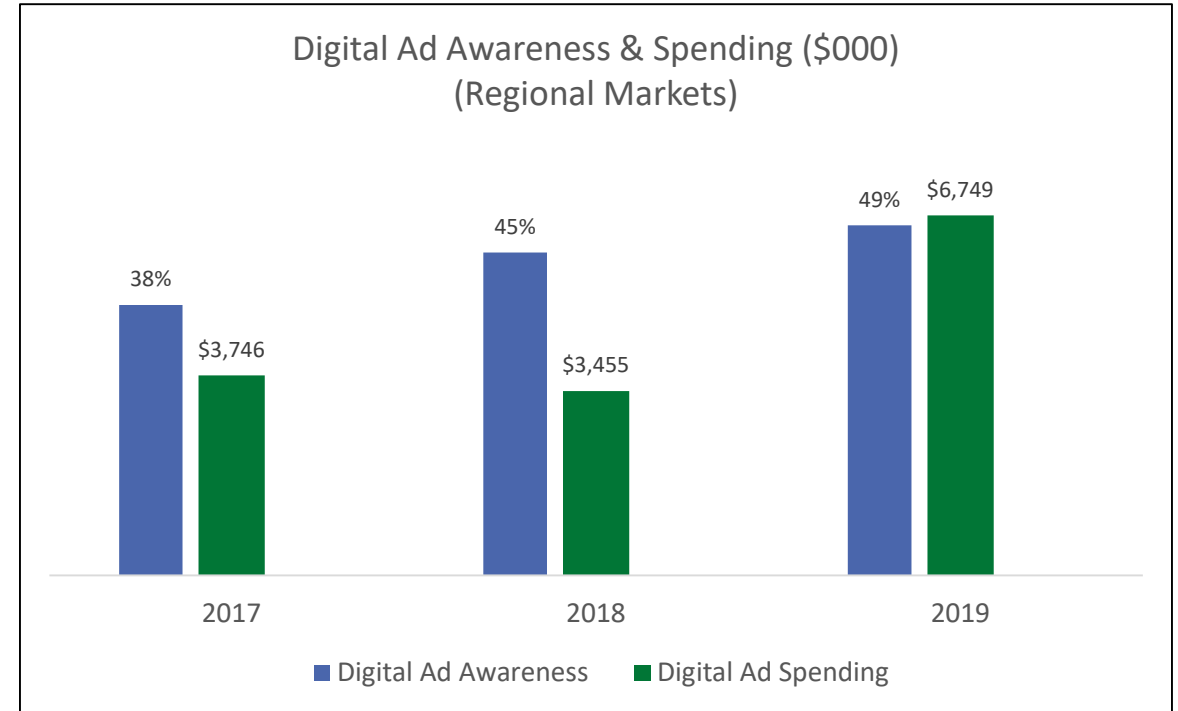
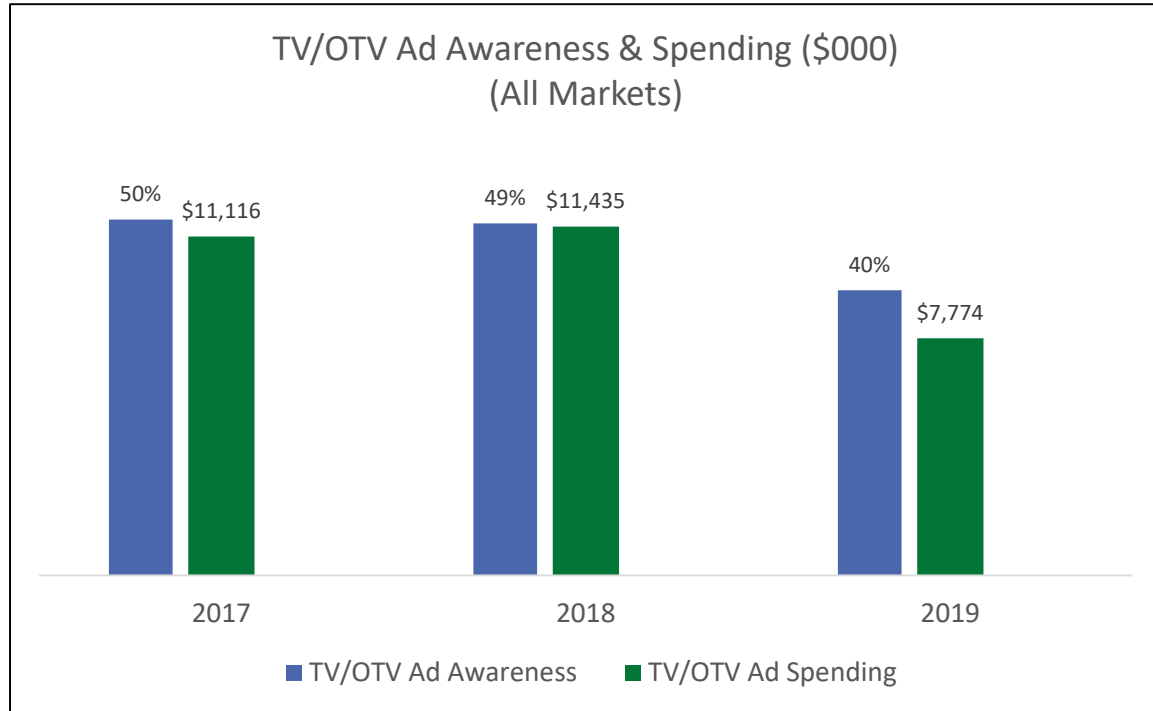
- Total regional awareness declined despite the significantly larger digital advertising investment (\$3.5 million in 2018 to \$6.7 million in 2019).
- Part of the decline is driven by adding Louisville and Pittsburgh to this market, but even without these two new markets regional awareness is 70%.
- An important takeaway from the regional result is that ad awareness is near saturation (again, around 70%) and additional investment is not moving the needle – which suggests that the additional dollars could be better spend in other markets.

# Feeder Markets Advertising Recall



- Awareness is more stable in the feeder markets despite a smaller investment here (\$938K in 2018 vs. \$306K in 2019).
- Southern Ontario, Minneapolis, and St. Louis continue to contribute the most ad-aware households of the feeder markets.

# TV/OTV & Digital Awareness & Spending Change

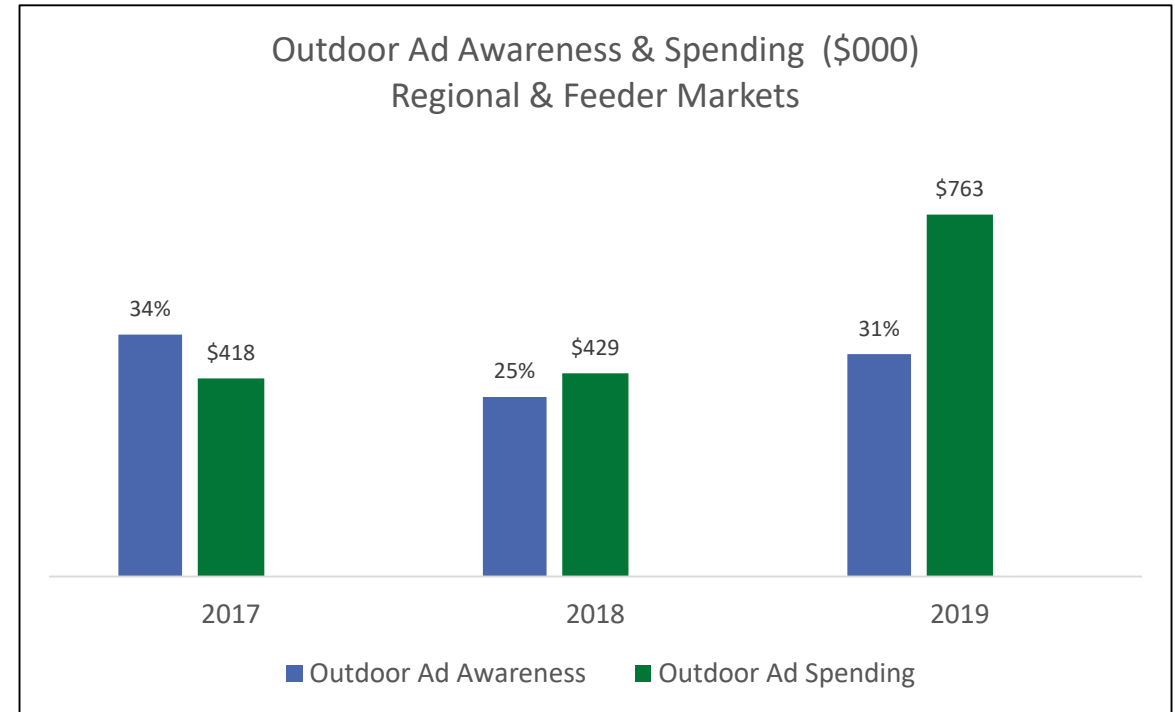
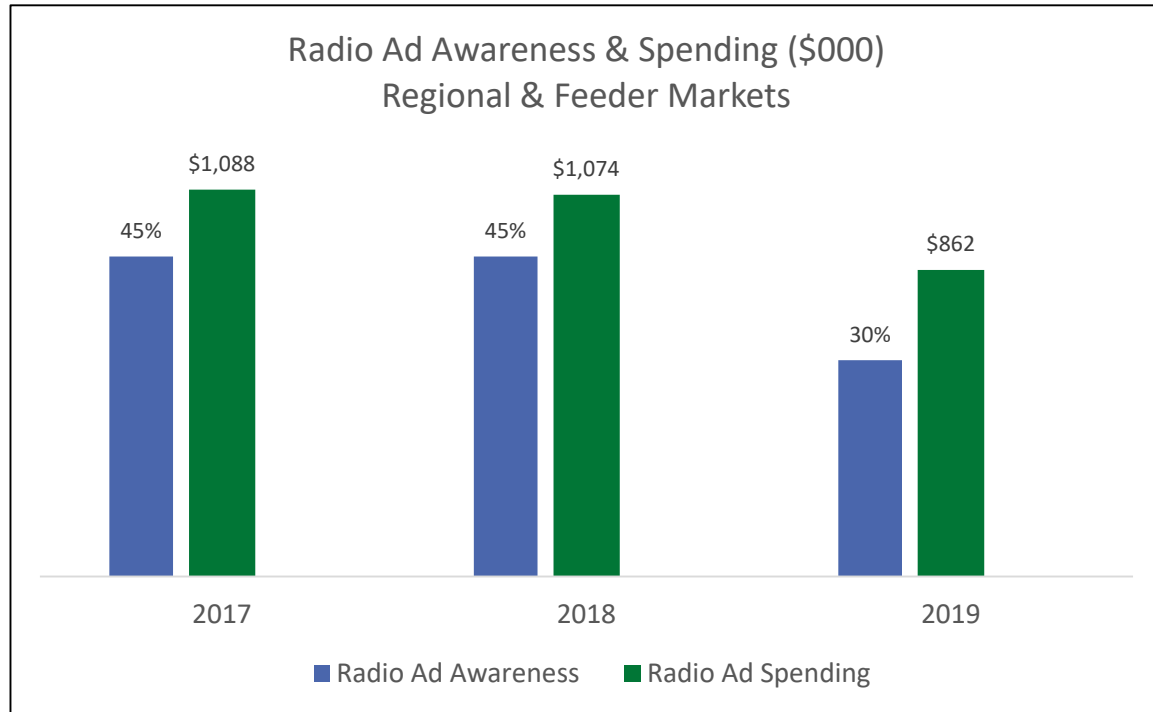


- Lower spending on TV/OTV led to lower awareness of this medium.
- More spending on digital advertising in the regional markets led to higher awareness of this medium, but a loss in efficiency in terms of cost per aware household.

	Regional 2018	Regional 2019
Target HHs	7,355,688	8,864,994
Digital Ad Awareness	45%	49%
Digital Ad-Aware HHs	3,337,772	4,363,244
Digital Media Spending	\$3,455,114	\$6,749,350
Cost per Digital Aware HH	\$1.04	\$1.55

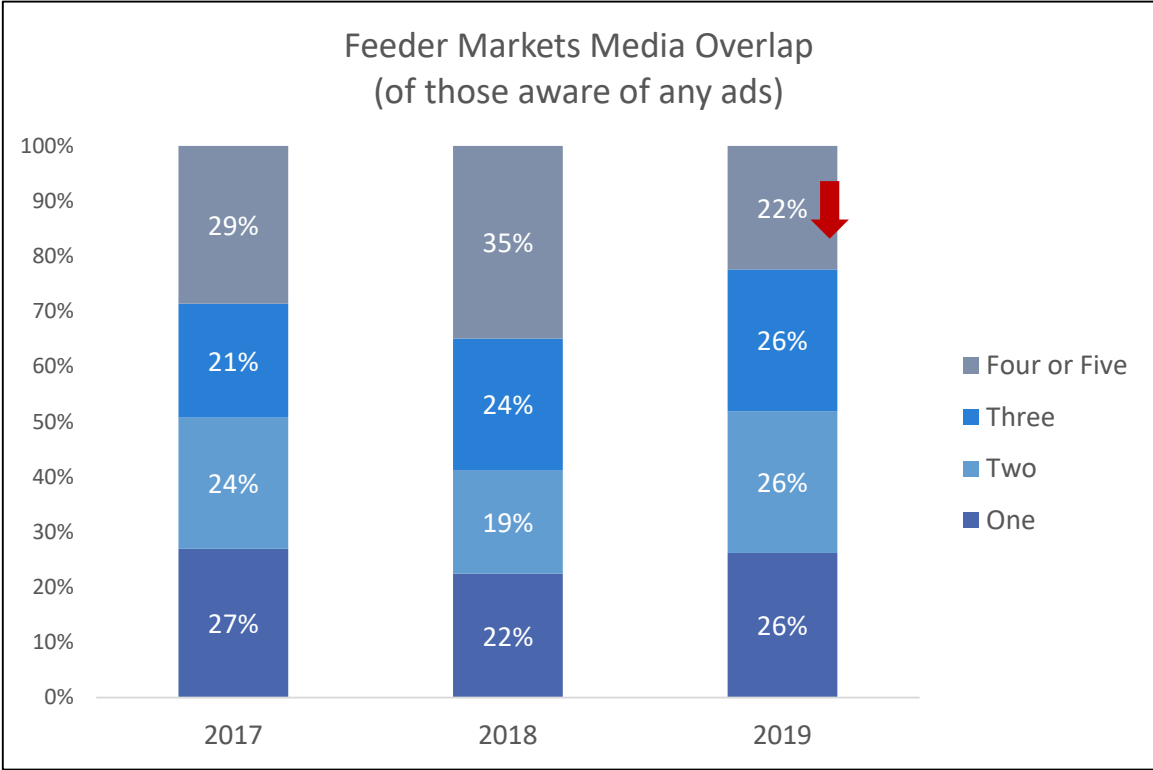
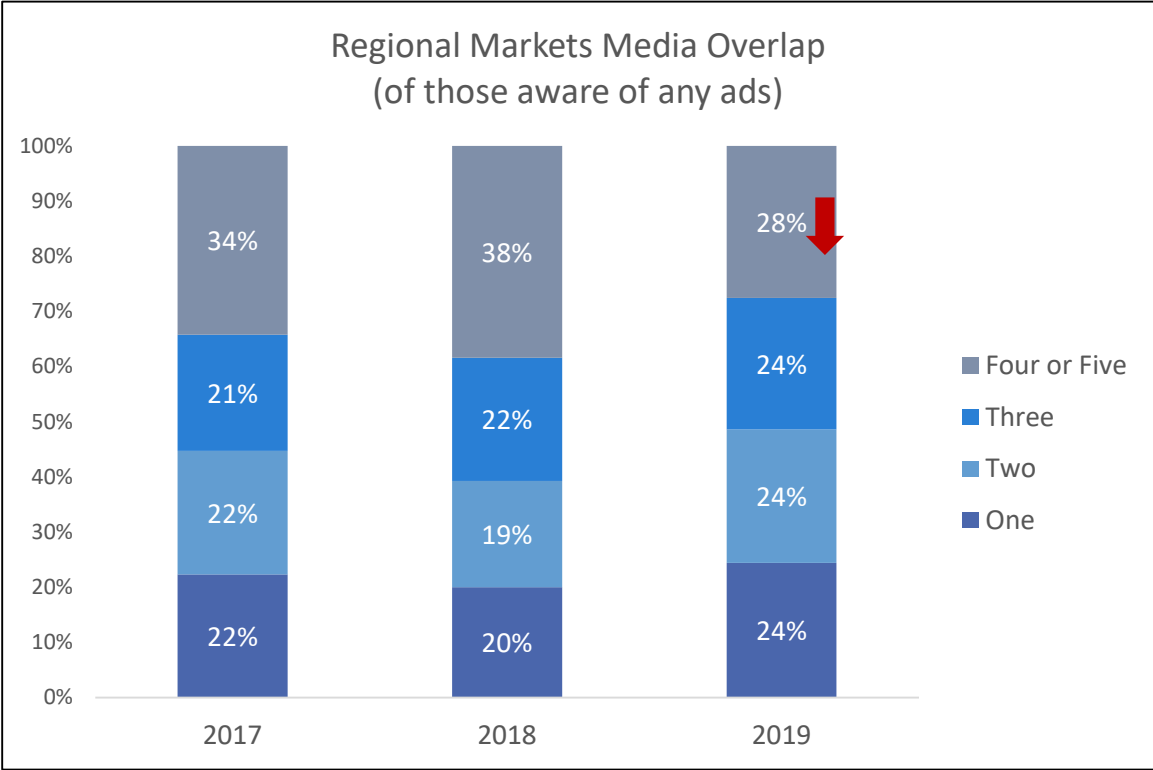


# Radio & OOH Awareness & Spending Change



- Lower spending on radio advertising led to lower awareness, while higher spending on outdoor advertising led to higher awareness.

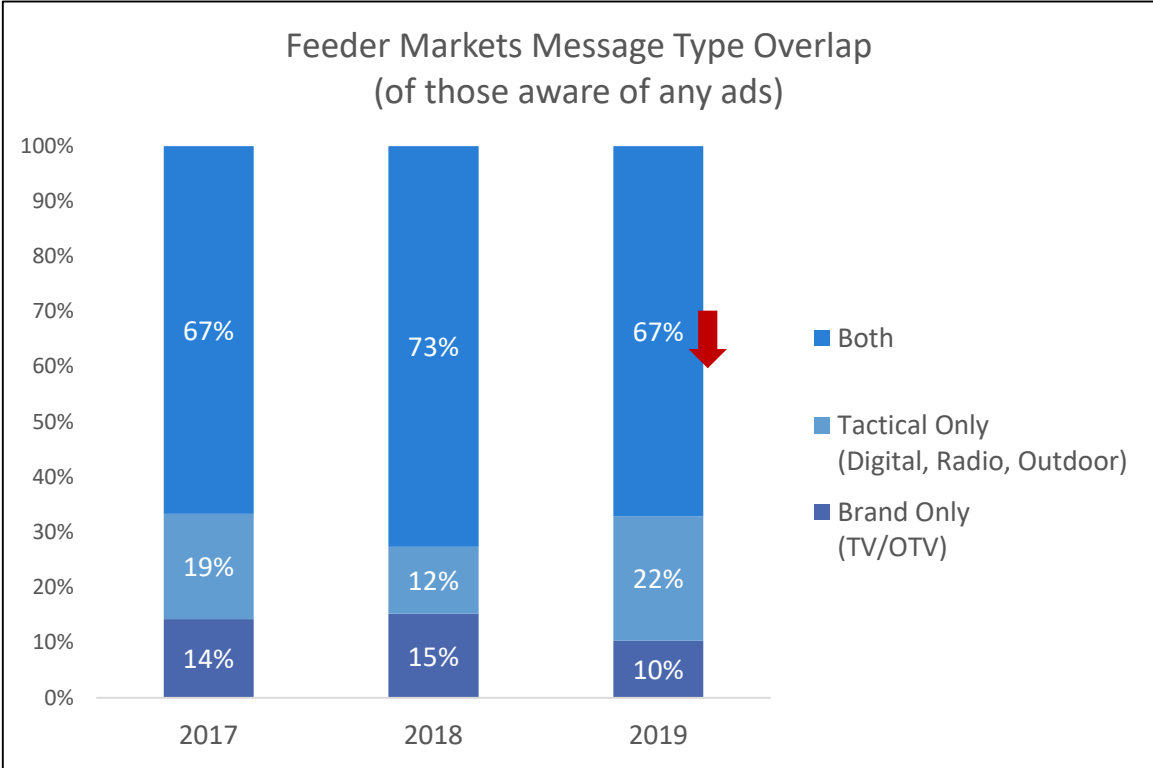
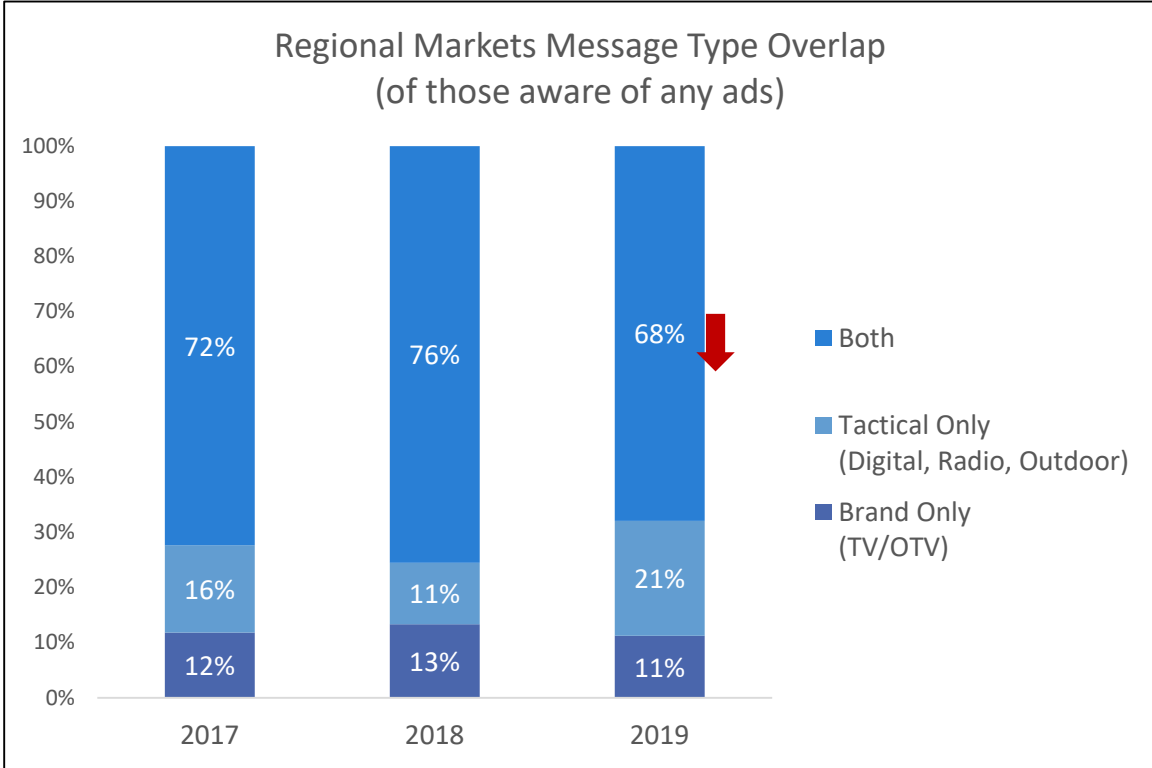
# Media Overlap



***Not showing national market because only TV/OTV was targeted at this market.***

- In 2018, the advertising campaign included five media. With the omission of print, the 2019 campaign includes only four.
- The result is a drop in the percentage of consumers aware of ads in four or five media. Past MEDC and other DMO research has shown that exposing consumers to ads in multiple media leads to greater impact, and generally the more media the greater the impact. The impact of exposure to multiple ad media in 2019 is reviewed later in this report.

# Message Type Overlap



*Not showing national market because only TV/OTV was targeted at this market.*

- Like the media overlap results, “message type” overlap also decreased in 2019; i.e., fewer regional and feeder market consumers recall seeing both brand and tactical advertising. This type of overlap has also been shown in past research to have a positive correlation with advertising impact – which is reviewed later in this report.

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# Creative Evaluation

Campaign ratings relating to messaging and generating interest in Michigan

# New Creative Tested

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- Before reviewing the 2019 creative ratings with a comparison to previous creative ratings, it should be noted that the 2019 campaign included some new elements like the nighttime ad “Dark Skies” and the winter ad “Facts”. The ads tested in prior campaigns featured daytime and non-winter activities and attractions.

**Sample Nighttime Ad “Dark Skies”**

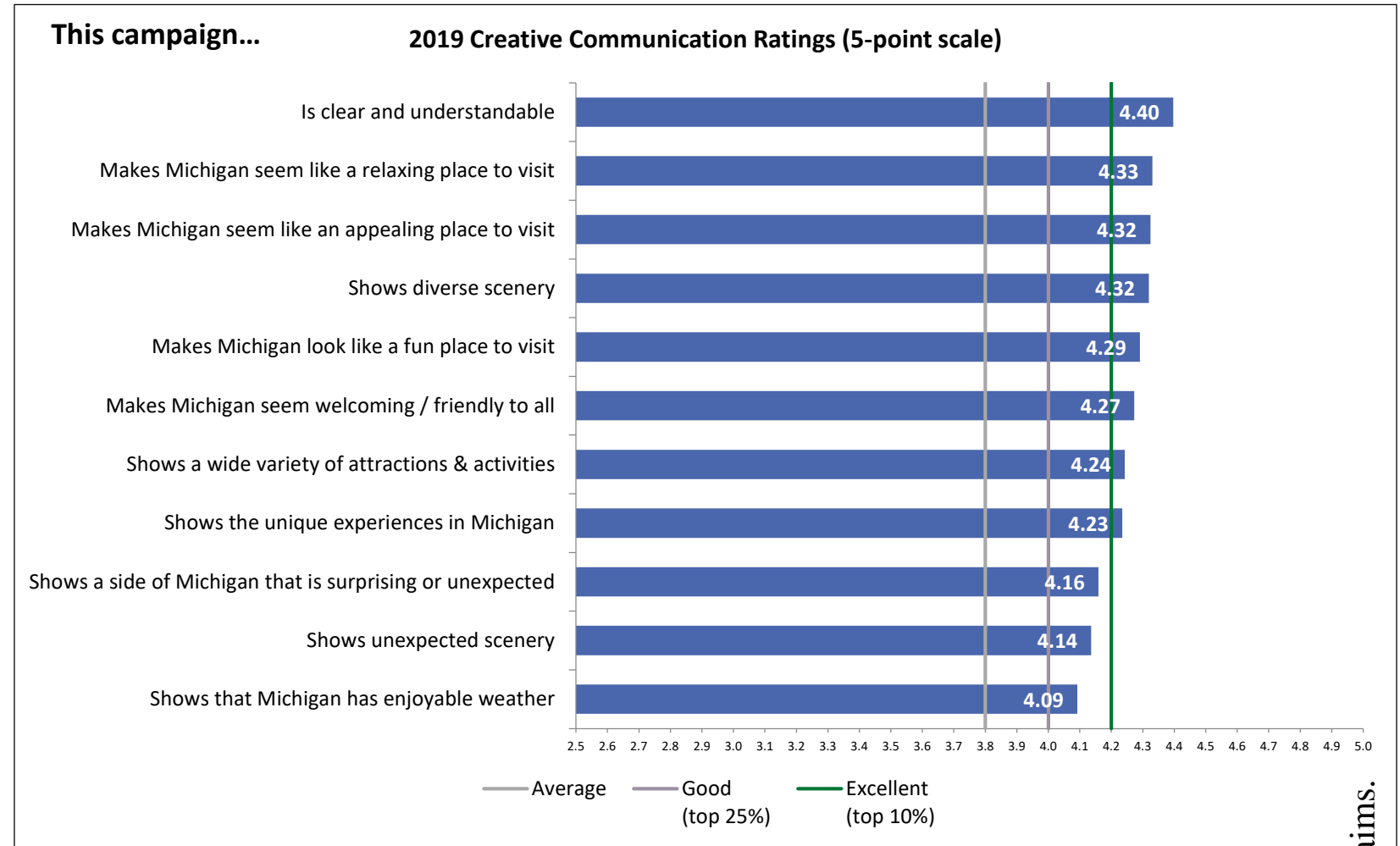


**Sample Winter Ad “Facts”**



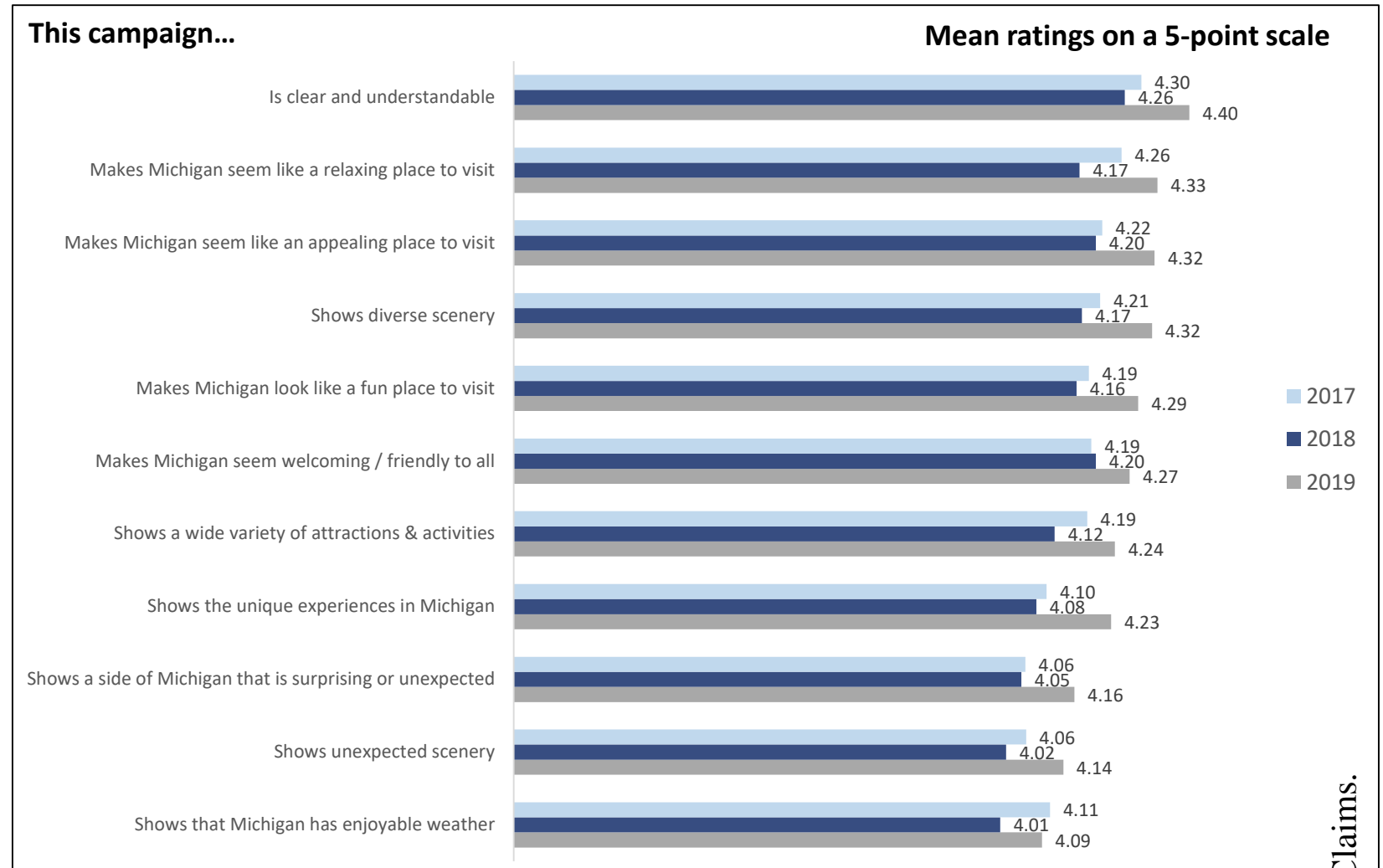
# 2019 Creative Communication Evaluation

- The 2019 MEDC advertising achieves ratings in the top 10% or top 25% benchmark level.
- The ads excel at clearly communicating that Michigan is relaxing, appealing, scenic, fun, welcoming, unique, and has a variety of attractions and activities.

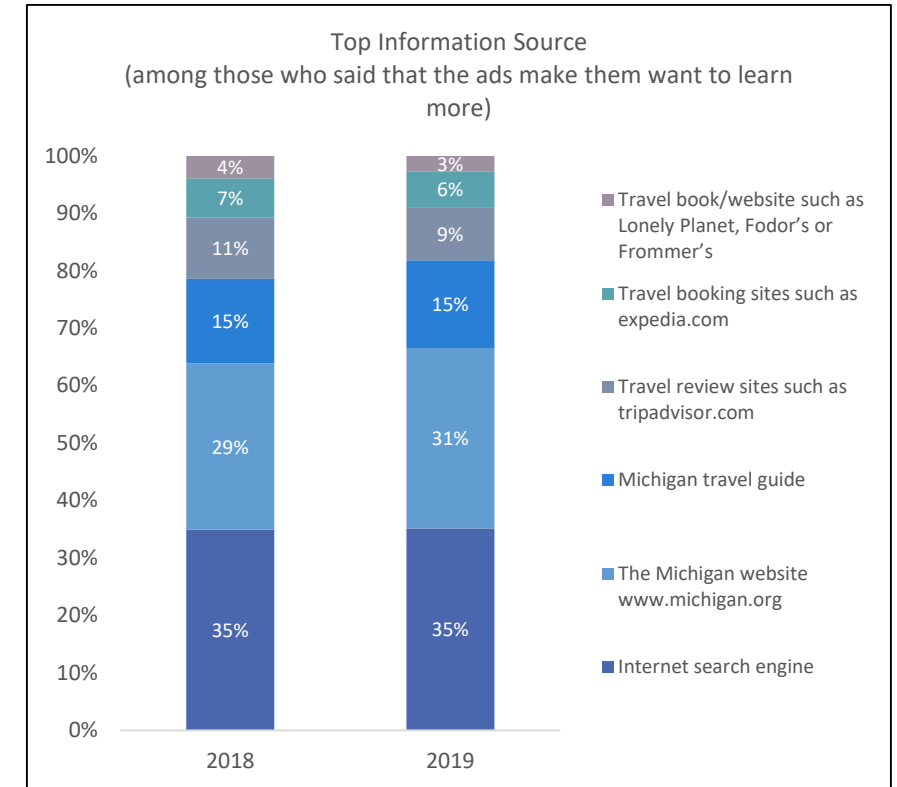
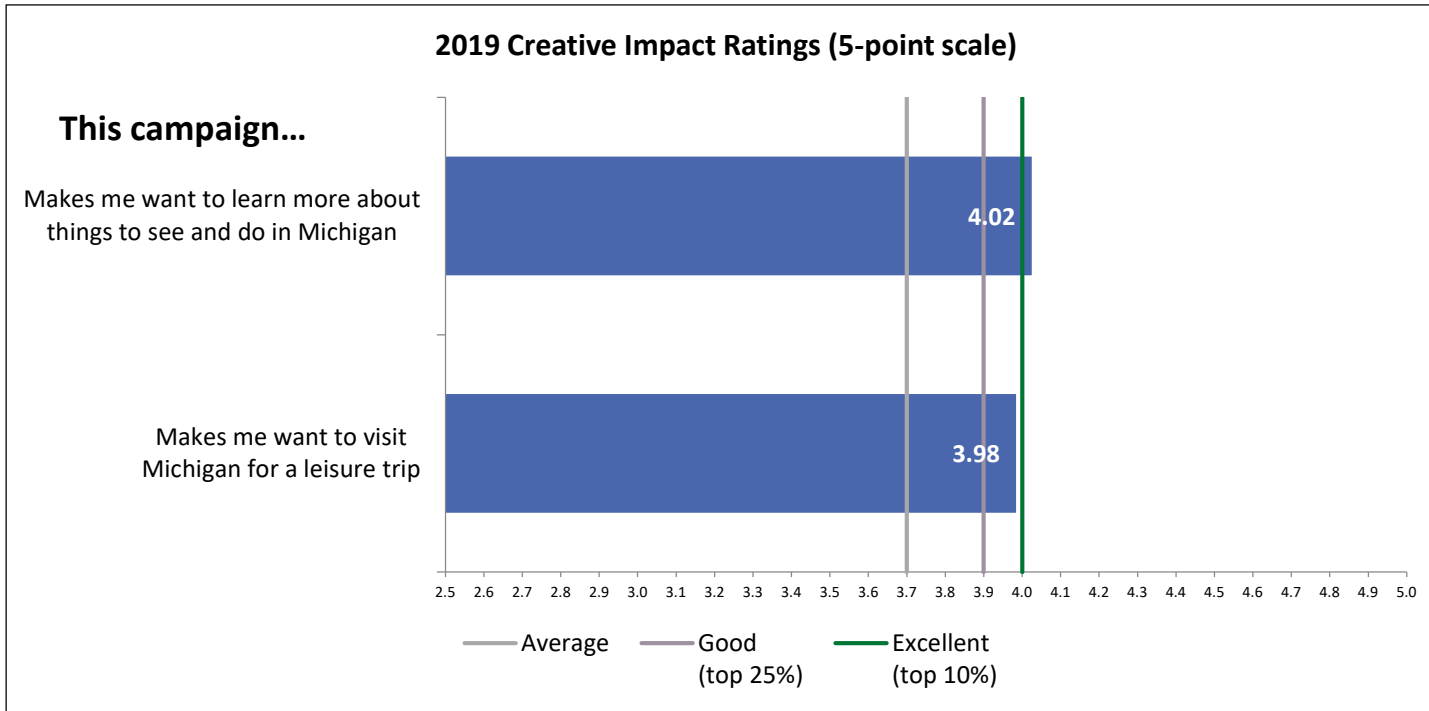


# Creative Communication Ratings Change

- The 2019 creative receives stronger communication ratings than the prior two years' creative – likely due to a broader product offering featured, which adds depth of appeal.



# 2019 Creative Impact Evaluation

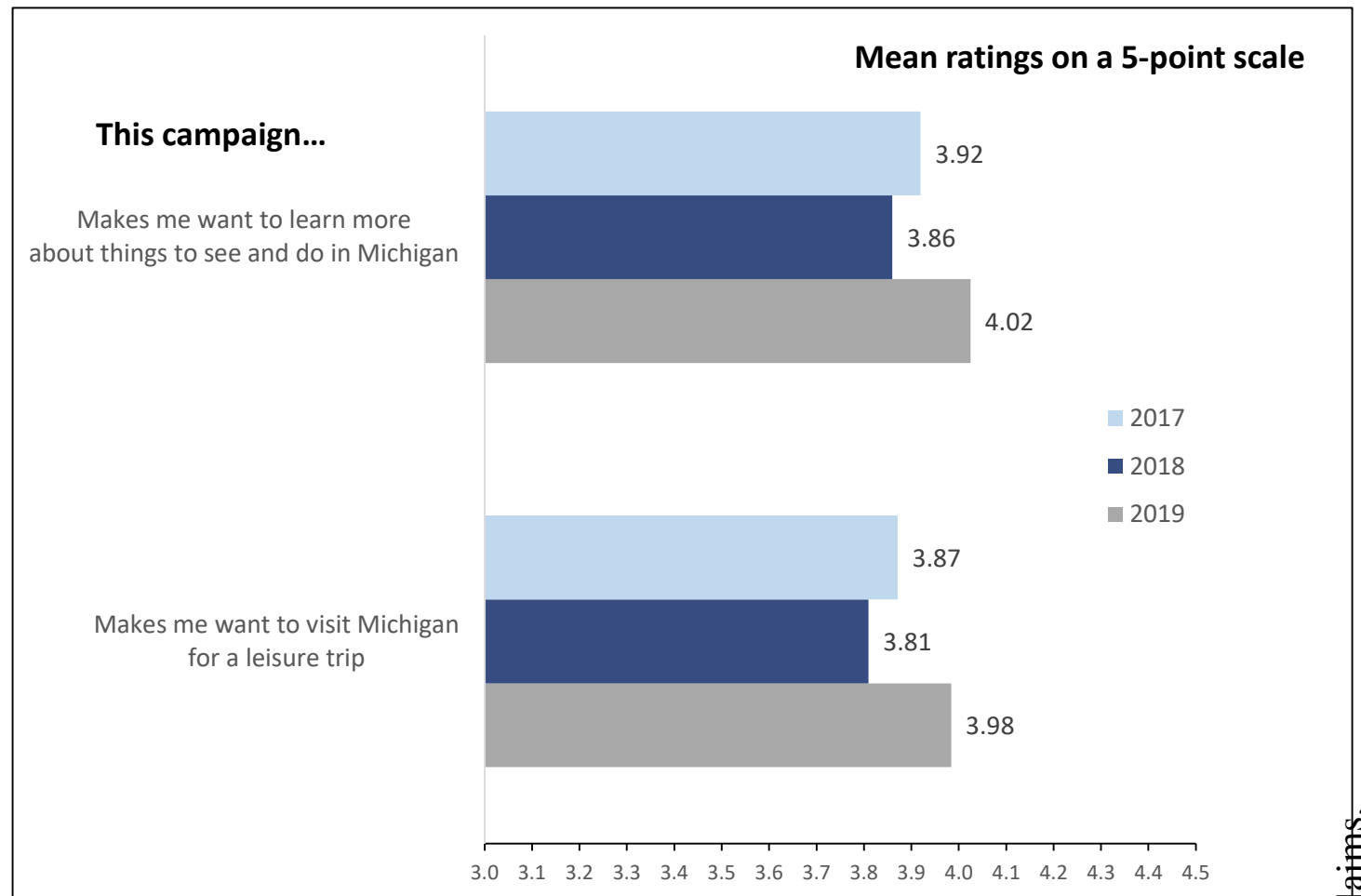


- The 2019 advertising also receives excellent (top 10%) ratings for generating interest in learning more about and visiting Michigan.
- Of those who said that the ads make them want to learn more about Michigan, search engines and Michigan.org are the top information resources.



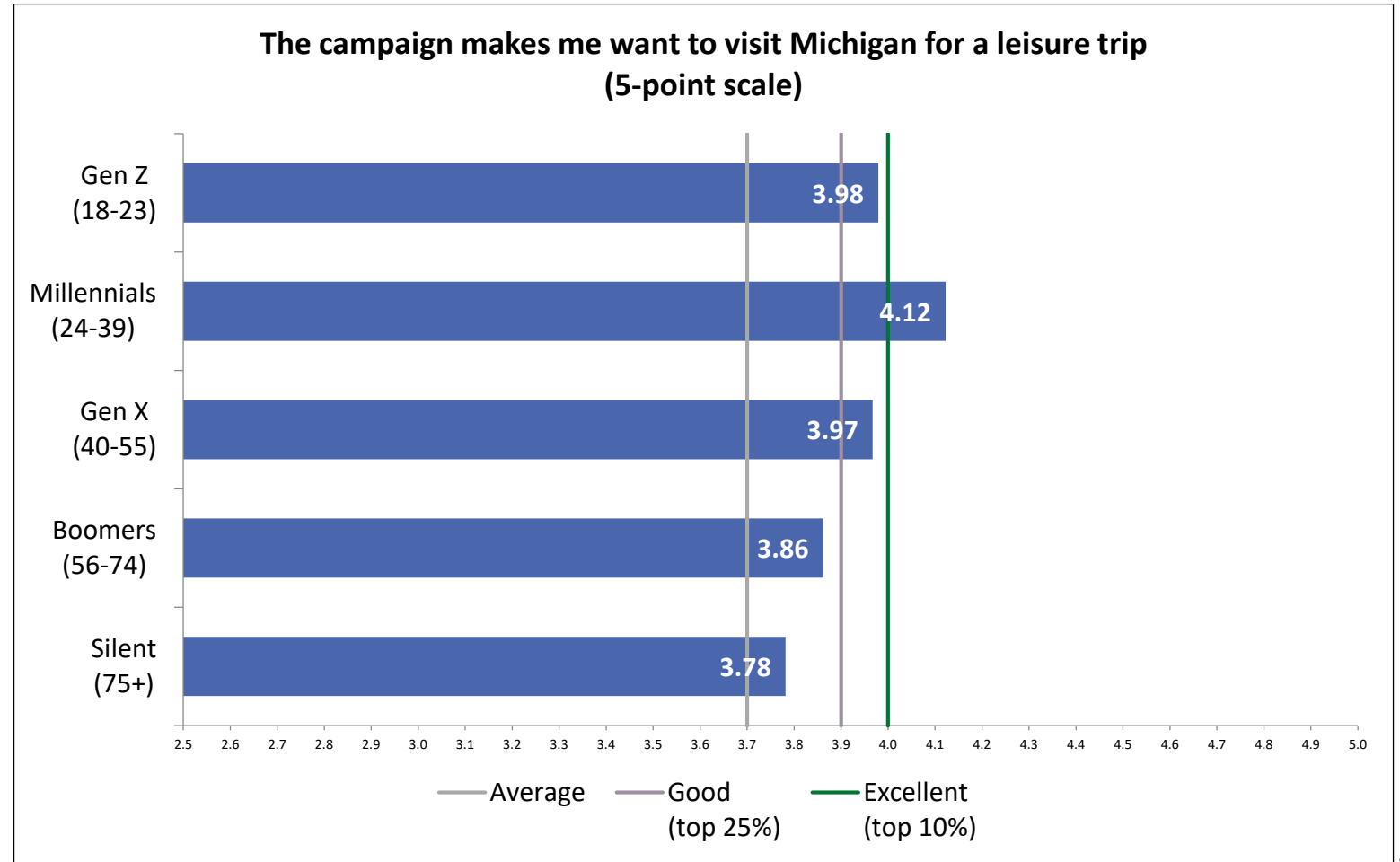
# Creative Impact Ratings Change

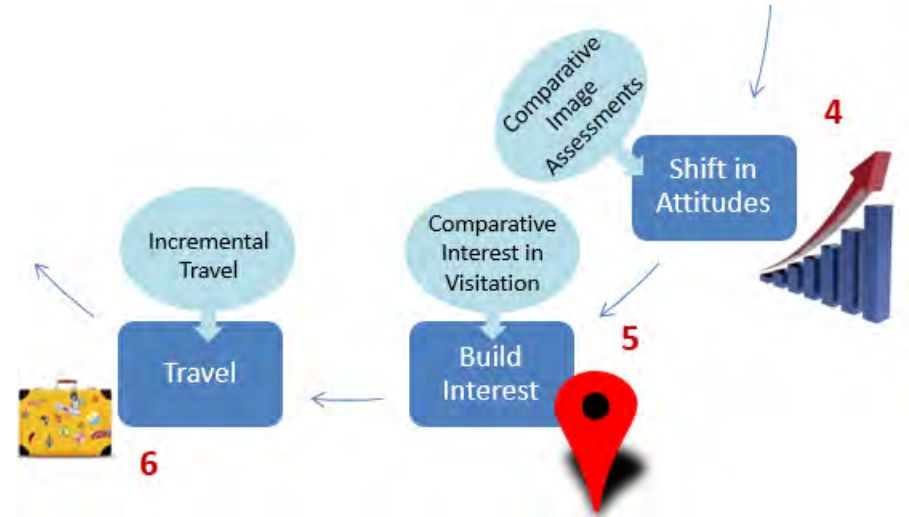
- Like the communication ratings result, the “impact ratings” improved compared to prior years.
- Expanding the breadth of product offering not only strengthens the ads’ ability to communicate key messages, it also increases interest in Michigan travel from this evaluative ratings perspective.



# Creative Ratings by Generation

- Creative ratings vary notably by age.
- Millennials have a strongly positive reaction to the advertising, giving the ads ratings well above the top 10% benchmark for making them want to visit the state.
- In contrast, Boomers and Silents rate the ads above average.
- This relative appeal should be considered when developing creative and targeting strategies.





# Advertising Impact & ROI

A comparison of ad-aware and unaware consumers to determine the advertising's influence on image, interest, and Michigan travel in 2019

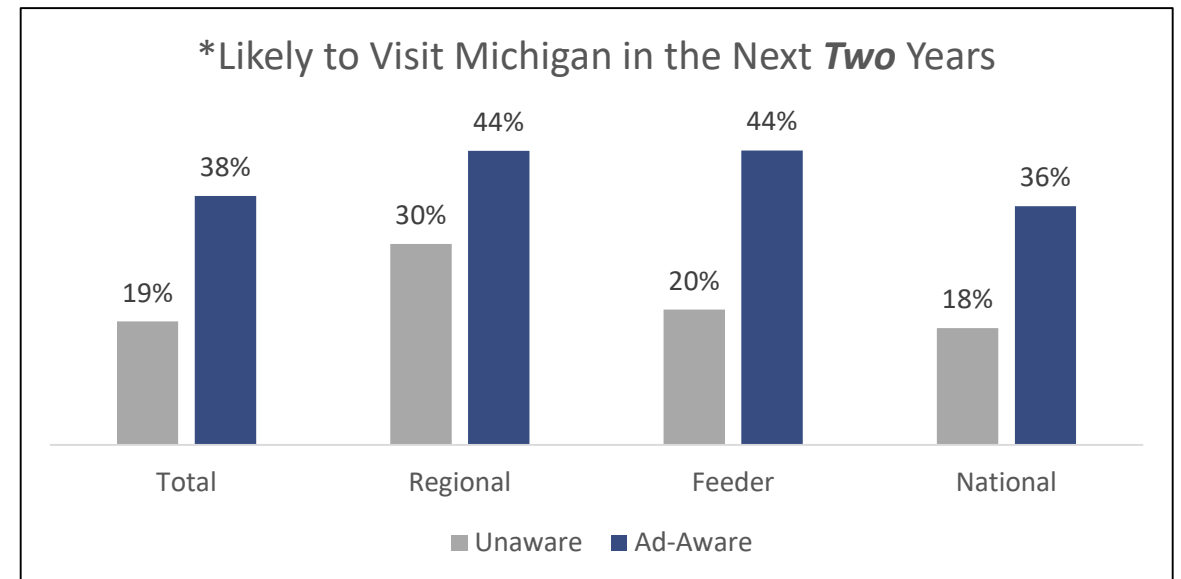
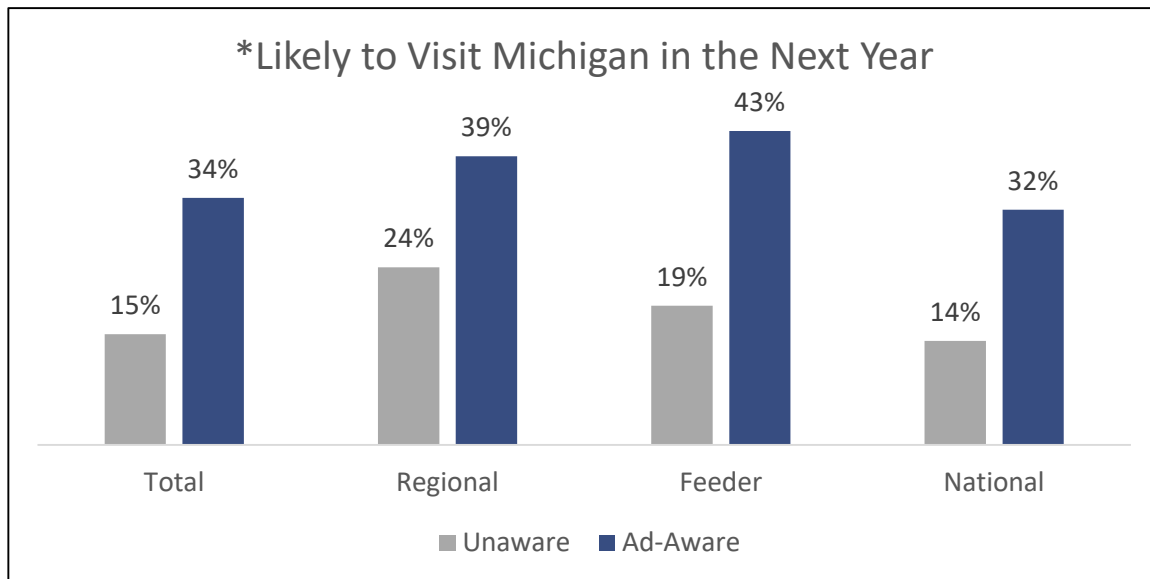
# Ad Impact on Image

- Those aware of the ads have a stronger perception of Michigan than those not aware of the ads.
- All ratings among those aware of the ads are statistically significantly higher than the ratings among those not aware of the ads.
- This speaks to the breadth of assets featured in the 2019 advertising.

	Unaware	Ad-Aware	Difference
Good, family fun destination	3.53	3.96	0.43
Excellent climate overall	3.10	3.52	0.42
Welcoming people / community / atmosphere	3.49	3.87	0.38
Unique and great selection of wineries / vineyards	3.09	3.46	0.37
Offers exciting attractions and destinations	3.40	3.77	0.37
Good night life	3.12	3.48	0.36
Good place for camping	3.54	3.90	0.36
Unique culinary experiences / high-quality food and beverage offerings	3.27	3.63	0.36
Offers a wide variety of things to do and places to see	3.54	3.89	0.35
Relaxing	3.55	3.91	0.35
Excellent museums / art galleries	3.27	3.61	0.34
Offers cultural and historical attractions	3.43	3.77	0.34
Offers excellent outdoor recreational activities	3.67	4.01	0.34
Destination with great value	3.47	3.80	0.34
Good for hiking / backpacking	3.51	3.84	0.33
Lots of festivals and special events	3.35	3.68	0.33
Beautiful fall colors	3.85	4.15	0.31
Unique and great selection of breweries and distilleries	3.28	3.59	0.31
Great for bicycling / running	3.45	3.75	0.30
Beautiful scenery	3.82	4.12	0.29
Offers enjoyable urban experiences	3.37	3.64	0.27
Safe to travel anywhere in this place	3.34	3.60	0.26
Great for boating / canoeing / kayaking / water sports	3.69	3.95	0.25
Great for golf	3.20	3.42	0.23
Excellent fishing	3.69	3.90	0.21

# Ad Impact on Intent to Visit Michigan

- Those aware of the advertising are more likely to visit Michigan in the next year, indicating that there will be ad impact on travel beyond the slice in time measured in this research.



\*The likelihood to visit figures in the charts represent 100% of those “already planning to visit,” 80% of those “very likely to visit,” and 20% of those “somewhat likely to visit.”

# Incremental Travel

- SMARInsights' methodology for measuring the impact of destination advertising relies on establishing a base rate of travel. Certainly, there would be travel to Michigan even without any paid advertising. Thus not all visitation, or even visitation by aware households, is attributable to the ads. In this evaluation, the level of travel among *unaware* households is considered the base and what the state would see without the marketing campaign. Accordingly, any travel above that base by *aware* households is what is considered influenced. As such, this is a very conservative measure of influence.



- But in addition to influencing a decision to visit, destination marketing can also motivate consumers to take more than one trip. Just as with incremental travel, repeat trips are considered incremental by comparing the number of trips by those aware of the advertising against those who are unaware.
- Because of this, the influence is not limited to just the number of incremental trips the campaign is able to influence but also the number of repeat trips it is able to motivate.



# Incremental Travel

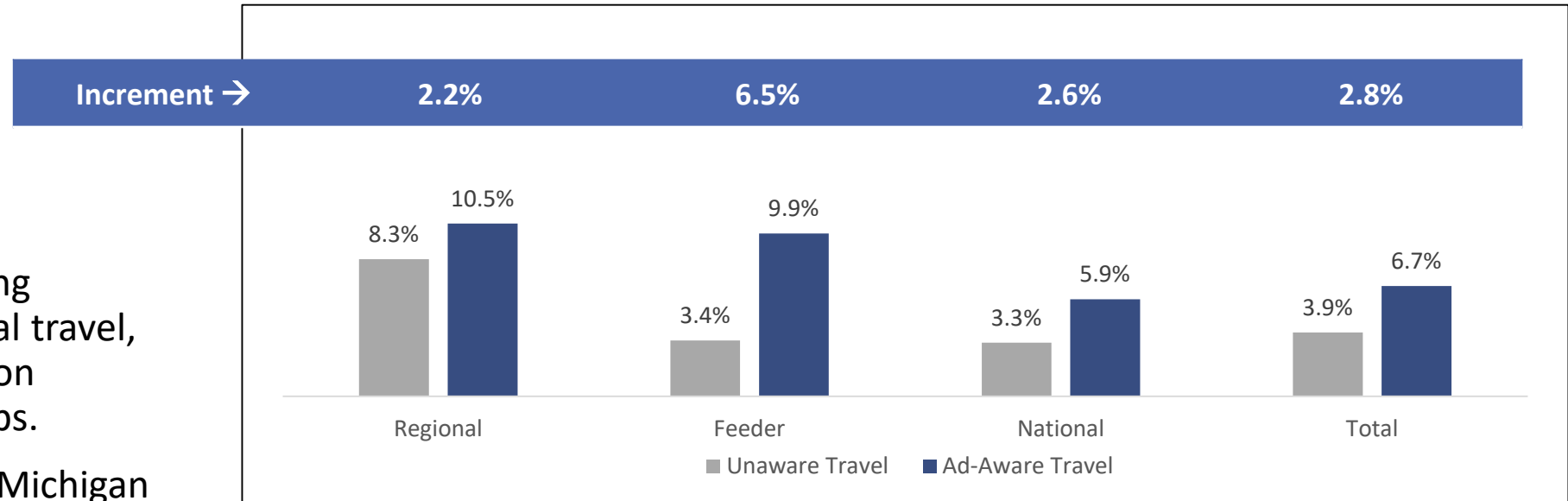
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This research evaluates the influence of the marketing on leisure travel. SMARInsights considers only those trips that can be influenced by the advertising. For this reason, the following kinds of trips are excluded from incremental travel calculations:

- Business travel
- Visiting friends and relatives
- Annual visitors – those who have visited Michigan five or more times in the last five years
- Property owners – those who own second homes or condos in Michigan

# 2019 Incremental Travel

- Overall, the 2019 advertising generated 2.8% incremental travel, equating to about 1.4 million ad-influenced Michigan trips.
- The advertising generated Michigan travel from all markets.



	Regional	Feeder	National	Total 2019
HHs	8,864,994	5,115,245	79,291,321	93,271,560
Advertising Recall	67%	59%	51%	53%
Ad-Aware HHs	5,956,099	3,019,351	40,357,858	49,333,307
Incremental Travel	2.2%	6.5%	2.6%	2.8%
Incremental Trips	129,449	196,460	1,061,541	1,387,450



# Incremental Travel Change

- The level of ad-influenced travel and the quantity of ad-influenced trips increased in the feeder markets but declined in the regional and national markets.
- Overall, the quantity of incremental trips declined in 2019. Lower ad awareness and less media overlap are driving this result. The 2019 creative is stronger than the prior creative from an evaluative ratings standpoint, but that is just one piece of the puzzle. The MEDC advertising is perennially strong, and the key is reaching a broad audience with multiple messages.

	Regional 2017	Regional 2018	Regional 2019
Aware HHs	5,562,101	5,331,491	5,956,099
Incremental Travel	2.1%	3.0%	2.2%
Incremental Trips	117,682	159,165	129,449

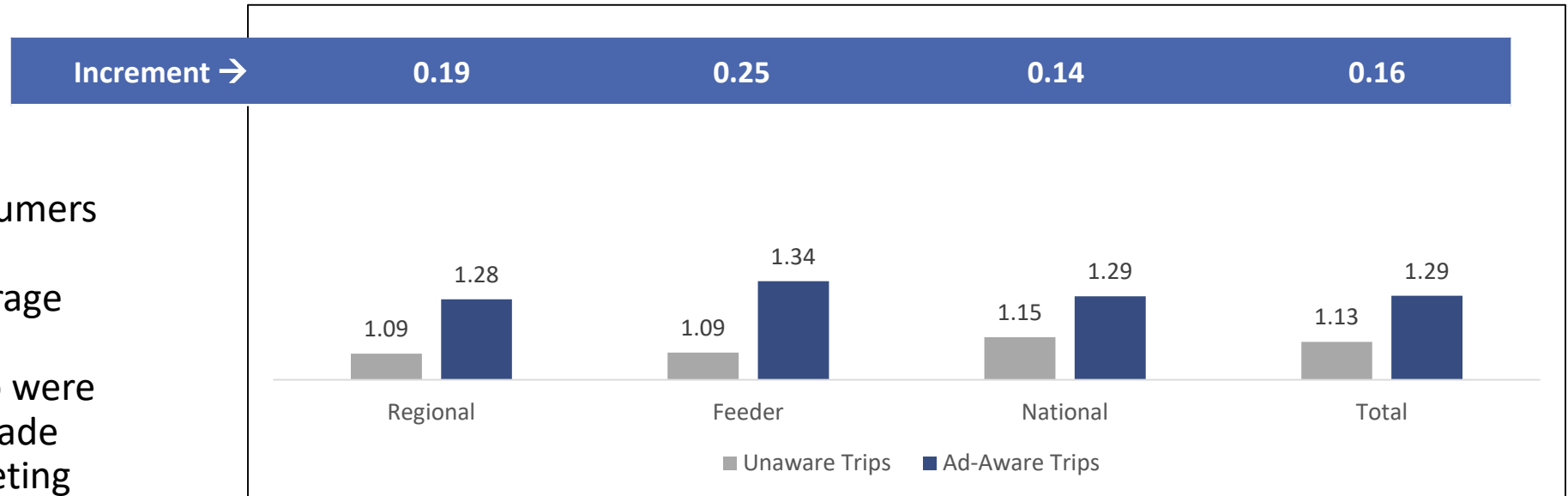
	Feeder 2017	Feeder 2018	Feeder 2019
Aware HHs	3,180,890	3,094,835	3,019,351
Incremental Travel	6.4%	4.1%	6.5%
Incremental Trips	204,552	127,457	196,460

	National 2017	National 2018	National 2019
Aware HHs	43,788,179	42,389,135	40,357,858
Incremental Travel	2.5%	3.1%	2.6%
Incremental Trips	1,082,252	1,307,752	1,061,541

	Total 2017	Total 2018	Total 2019
Aware HHs	52,531,170	50,815,461	49,333,307
Incremental Travel	2.7%	3.1%	2.8%
Incremental Trips	1,404,485	1,594,373	1,387,450

# 2019 Incremental Repeat Trips

- Besides encouraging consumers to take a trip, destination marketing also can encourage repeat visitation. In all the market groups, those who were aware of the marketing made more trips after the marketing began airing than those without recall.
- There were about 528,000 influenced repeat trips to Michigan in 2019.



	Regional	Feeder	National	Total
Aware HHs	5,956,099	3,019,351	40,357,858	49,333,307
Ad-Aware Travel	10.5%	9.9%	5.9%	6.7%
Trips by Ad-Aware HHs	624,239	298,392	2,373,992	3,296,622
Additional Trips Among Ad-Aware	0.19	0.25	0.14	0.16
Incremental Repeat Trips	117,882	74,108	336,411	528,401

# Incremental Repeat Trips Change

- The quantity of ad-influenced repeat trips increased in the regional and feeder markets but declined in the national market.
- Recall that the level of overall incremental travel declined in the regional markets. The ads are working to drive more repeat visits from these markets, offsetting some of the dip in incremental travel.

	Regional 2017	Regional 2018	Regional 2019
Ad-Aware Visiting HHs	562,734	436,751	624,239
Additional Trips Among Ad-Aware	0.17	0.16	0.19
Incremental Repeat Trips	97,421	68,239	117,882

	Feeder 2017	Feeder 2018	Feeder 2019
Ad-Aware Visiting HHs	389,815	342,308	298,392
Additional Trips Among Ad-Aware	0.05	0.10	0.25
Incremental Repeat Trips	18,724	34,482	74,108

	National 2017	National 2018	National 2019
Ad-Aware Visiting HHs	2,078,696	2,182,494	2,373,992
Additional Trips Among Ad-Aware	0.24	0.20	0.14
Incremental Repeat Trips	492,058	432,486	336,411

	Total 2017	Total 2018	Total 2019
Ad-Aware Visiting HHs	3,031,245	2,961,553	3,296,622
Additional Trips Among Ad-Aware	0.20	0.18	0.16
Incremental Repeat Trips	608,203	535,207	528,401

# 2019 Total Influenced Trips & Person Trips

- Overall, the 2019 advertising influenced 1.9 million Michigan trips – 1.4 million initial trips and another 528,000 repeat trips.
- The 1.9 million trips translates into about 5.8 million person trips when accounting average party size.

	Regional	Feeder	National	Total 2019
Incremental Trips	129,449	196,460	1,061,541	1,387,450
Incremental Repeat Trips	117,882	74,108	336,411	528,401
Total Influenced Trips	247,331	270,568	1,397,952	1,915,851
Avg. Party Size among Ad-Aware	2.93	3.03	3.06	3.04
Influenced Person Trips	724,975	818,757	4,280,149	5,823,881

# Total Influenced Trips Change

	Regional 2017	Regional 2018	Regional 2019
Incremental Trips	117,682	159,165	129,449
Incremental Repeat Trips	97,421	68,239	117,882
Total Influenced Trips	215,103	227,404	247,331
Avg. Party Size Among Ad-Aware	3.02	2.89	2.93
Influenced Person Trips	648,824	657,103	724,975

	Feeder 2017	Feeder 2018	Feeder 2019
Incremental Trips	204,552	127,457	196,460
Incremental Repeat Trips	18,724	34,482	74,108
Total Influenced Trips	223,276	161,939	270,568
Avg. Party Size Among Ad-Aware	3.35	2.92	3.03
Influenced Person Trips	748,652	472,770	818,757

	National 2017	National 2018	National 2019
Incremental Trips	1,082,252	1,307,752	1,061,541
Incremental Repeat Trips	492,058	432,486	336,411
Total Influenced Trips	1,574,310	1,740,237	1,397,952
Avg. Party Size Among Ad-Aware	2.72	3.05	3.06
Influenced Person Trips	4,280,156	5,309,782	4,280,149

	Total 2017	Total 2018	Total 2019
Incremental Trips	1,404,485	1,594,373	1,387,450
Incremental Repeat Trips	608,203	535,207	528,401
Total Influenced Trips	2,012,688	2,129,580	1,915,851
Avg. Party Size Among Ad-Aware	2.82	3.02	3.04
Influenced Person Trips	5,677,632	6,439,655	5,823,881

- Total ad-influenced trips and person trips decreased in 2019.
- The regional and feeder markets both generated more ad-influenced trips and person trips in 2019 compared to the prior year.
- The declines in the national market drove the overall decline. Reducing the national TV/OTV investment by 35% led to less ad-influenced trips from this market – again highlighting the opportunity to shift some regional ad dollars to the national market.

# 2019 Return on Investment

- The 1.9 million ad-influenced trips in 2019 resulted in about \$2.3 billion in visitor spending and \$142 million in state tax revenue.
- The 2019 advertising ultimately returned \$8.79 in state tax revenue for each \$1 invested in the advertising.

	Regional	Feeder	National	Total 2018
HHs	8,864,994	5,115,245	79,291,321	93,271,560
Recall	67%	59%	51%	53%
Aware HHs	5,956,099	3,019,351	40,357,858	49,333,307
Incremental Travel	2.2%	6.5%	2.6%	2.8%
Incremental Trips	129,449	196,460	1,061,541	1,387,450
Incremental Repeat Trips	117,882	74,108	336,411	528,401
Total Influenced Trips	247,331	270,568	1,397,952	1,915,851
Avg. Ad Aware Visitor Spending	\$992	\$924	\$1,299	\$1,207
Influenced Spending	\$245,365,311	\$250,100,645	\$1,816,572,075	\$2,312,038,031
State Taxes Generated				\$141,959,135
Media Spending				\$16,148,931
<b>Tax ROI</b>				<b>\$8.79</b>

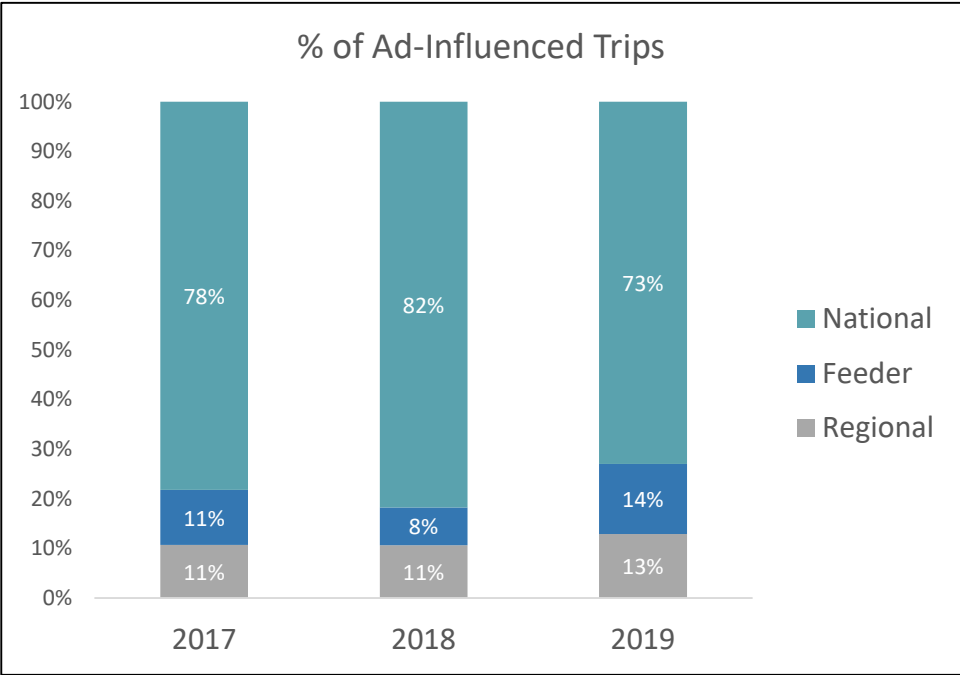
# Return on Investment Change

- 2019 ad-influenced visitor spending is down compared to 2018, but up compared to 2017.
- With less ad-influenced visitor spending, the tax ROI decreased from \$9.28 in 2018 to \$8.79 in 2019.

\* The direct state tax rate used in 2019 is 6.14%. The direct state tax rate used in 2018 was 6.02%. The tax rate was revised based on Tourism Economics' analysis of ad-influenced spending by industry category and the associated direct tax rates of each.

	2017	2018	2019
Ad Awareness	57%	55%	53%
Ad-Aware HHs	52,531,170	50,815,461	49,333,307
Incremental Travel	2.7%	3.1%	2.81%
Incremental Trips	1,404,485	1,594,373	1,387,450
Incremental Repeat Trips	608,203	535,207	528,401
Total Ad-Influenced Trips	2,012,688	2,129,580	1,915,851
Avg. Ad-Aware Visitor Spending	\$1,047	\$1,194	\$1,207
Ad-Influenced Spending	\$2,108,049,799	\$2,543,520,534	\$2,312,038,031
*State Taxes Generated	\$147,563,486	\$153,119,936	\$141,959,135
Media Spending	\$16,423,102	\$16,498,833	\$16,148,931
<b>Tax ROI</b>	<b>\$8.99</b>	<b>\$9.28</b>	<b>\$8.79</b>

# Market Performance



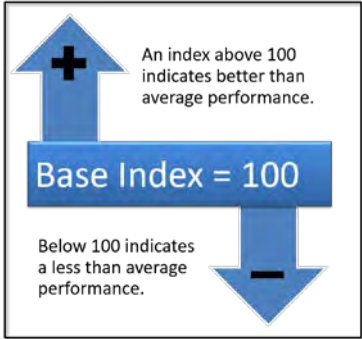
2017	Regional	Feeder	National
% of HHs	8%	5%	87%
% of Influenced Trips	11%	11%	78%
Performance Index	135	202	90

2018	Regional	Feeder	National
% of HHs	8%	5%	87%
% of Influenced Trips	11%	8%	82%
Performance Index	135	139	94

2019	Regional	Feeder	National
% of HHs	10%	5%	85%
% of Influenced Trips	13%	14%	73%
Performance Index	136	258	86



- The national markets continue to account for the bulk of ad-influenced Michigan trips, although the percentage contribution declined from 82% in 2018 to 73% in 2019.
- The regional and feeder markets contribute more than their “share,” as indicated by their performance index over 100.
- In summary, the advertising is influencing Michigan travel from all markets. The national markets are particularly important due to their sheer size, while the regional and feeder markets produce more trips than expected given their population because of their familiarity and proximity.



# Incremental Travel Change Spring/Summer YOY Comparison

- The level of ad-influenced travel and the quantity of ad-influenced trips increased in the feeder markets but declined in the regional and national markets.
- Overall, the quantity of incremental trips declined in 2019.

	Regional 2017	Regional 2018	Regional 2019
Aware HHs	5,562,101	5,331,491	5,885,662
Incremental Travel	2.1%	3.0%	2.4%
Incremental Trips	117,682	159,165	138,926

	Feeder 2017	Feeder 2018	Feeder 2019
Aware HHs	3,180,890	3,094,835	2,941,750
Incremental Travel	6.4%	4.1%	6.1%
Incremental Trips	204,552	127,457	179,472

	National 2017	National 2018	National 2019
Aware HHs	43,788,179	42,389,135	39,566,527
Incremental Travel	2.5%	3.1%	2.4%
Incremental Trips	1,082,252	1,307,752	954,956

	Total 2017	Total 2018	Total 2019
Aware HHs	52,531,170	50,815,461	48,393,940
Incremental Travel	2.7%	3.1%	2.63%
Incremental Trips	1,404,485	1,594,373	1,273,355

# Incremental Repeat Trips Change Spring/Summer YOY Comparison

- The quantity of ad-influenced repeat trips increased in the regional and feeder markets but declined in the national market. Overall there are more incremental repeat trips year-over-year.

	Regional 2017	Regional 2018	Regional 2019
Ad-Aware Visiting HHs	562,734	436,751	621,570
Additional Trips Among Ad-Aware	0.17	0.16	0.19
Incremental Repeat Trips	97,421	68,239	119,542

	Feeder 2017	Feeder 2018	Feeder 2019
Ad-Aware Visiting HHs	389,815	342,308	288,692
Additional Trips Among Ad-Aware	0.05	0.10	0.25
Incremental Repeat Trips	18,724	34,482	71,994

	National 2017	National 2018	National 2019
Ad-Aware Visiting HHs	2,078,696	2,182,494	2,294,859
Additional Trips Among Ad-Aware	0.24	0.20	0.16
Incremental Repeat Trips	492,058	432,486	368,500

	Total 2017	Total 2018	Total 2019
Ad-Aware Visiting HHs	3,031,245	2,961,553	3,205,121
Additional Trips Among Ad-Aware	0.20	0.18	0.17
Incremental Repeat Trips	608,203	535,207	560,037

# Total Influenced Trips Change Spring/Summer YOY Comparison

	Regional 2017	Regional 2018	Regional 2019
Incremental Trips	117,682	159,165	138,926
Incremental Repeat Trips	97,421	68,239	119,542
Total Influenced Trips	215,103	227,404	258,469

	Feeder 2017	Feeder 2018	Feeder 2019
Incremental Trips	204,552	127,457	179,472
Incremental Repeat Trips	18,724	34,482	71,994
Total Influenced Trips	223,276	161,939	251,466

	National 2017	National 2018	National 2019
Incremental Trips	1,082,252	1,307,752	954,956
Incremental Repeat Trips	492,058	432,486	368,500
Total Influenced Trips	1,574,310	1,740,237	1,323,456

	Total 2017	Total 2018	Total 2019
Incremental Trips	1,404,485	1,594,373	1,273,355
Incremental Repeat Trips	608,203	535,207	560,037
Total Influenced Trips	2,012,688	2,129,580	1,833,391

- Total ad-influenced trips decreased in 2019.
- The regional and feeder markets both generated more ad-influenced trips in 2019 compared to the prior year.
- The declines in the national market drove the overall decline.

# Return on Investment Change Spring/Summer YOY Comparison

- 2019 ad-influenced visitor spending is down compared to 2018, but up compared to 2017.
- Ultimately the 2019 spring and summer advertising returned \$11.43 for each \$1 invested – a stronger tax ROI than the prior two years.

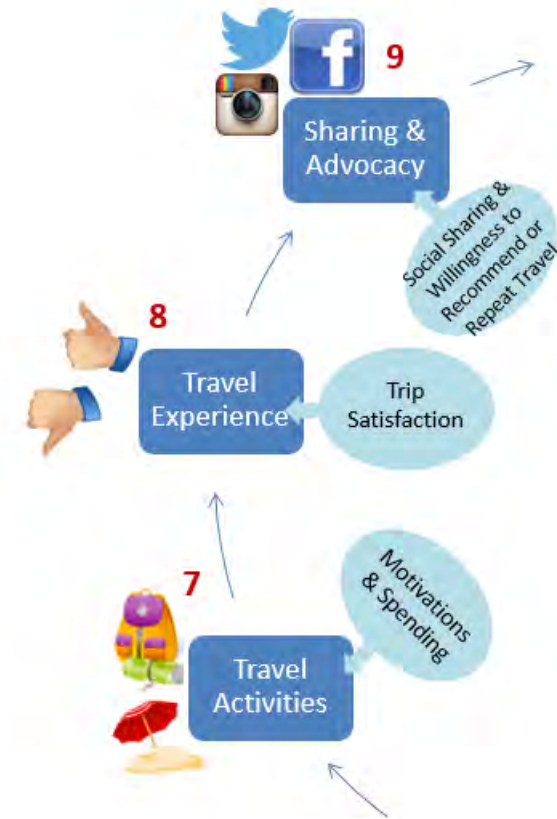
\* The direct state tax rate used in 2019 is 6.14%. The direct state tax rate used in 2018 was 6.02%. The tax rate was revised based on Tourism Economics' analysis of ad-influenced spending by industry category and the associated direct tax rates of each.

	2017	2018	2019
Ad Awareness	57%	55%	52%
Ad-Aware HHs	52,531,170	50,815,461	48,393,940
Incremental Travel	2.7%	3.1%	2.63%
Incremental Trips	1,404,485	1,594,373	1,273,355
Incremental Repeat Trips	608,203	535,207	560,037
Total Ad-Influenced Trips	2,012,688	2,129,580	1,833,391
Avg. Ad-Aware Visitor Spending	\$1,047	\$1,194	\$1,206
Ad-Influenced Spending	\$2,108,049,799	\$2,543,520,534	\$2,211,617,180
*State Taxes Generated	\$147,563,486	\$153,119,936	\$135,793,295
Media Spending	\$16,423,102	\$16,498,833	\$11,885,280
<b>Tax ROI</b>	<b>\$8.99</b>	<b>\$9.28</b>	<b>\$11.43</b>



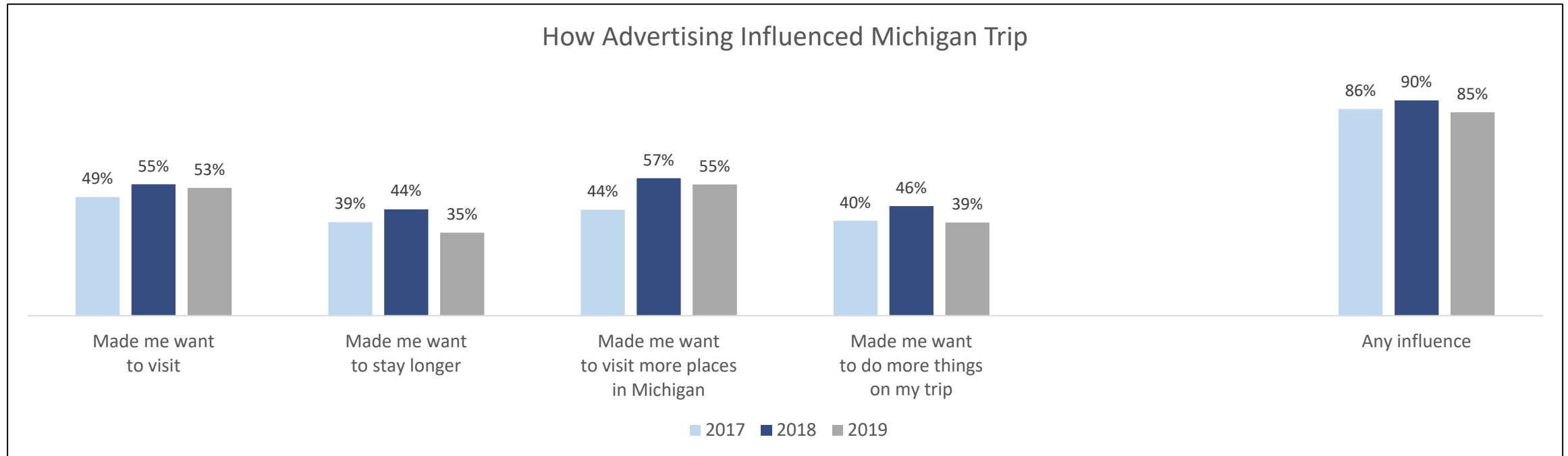
# Ad Impact on the Michigan Trip Experience

Review of how the advertising not only influences the decision to visit, but also gives visitors trip ideas, which lead to longer, more active, better trips with higher spending.

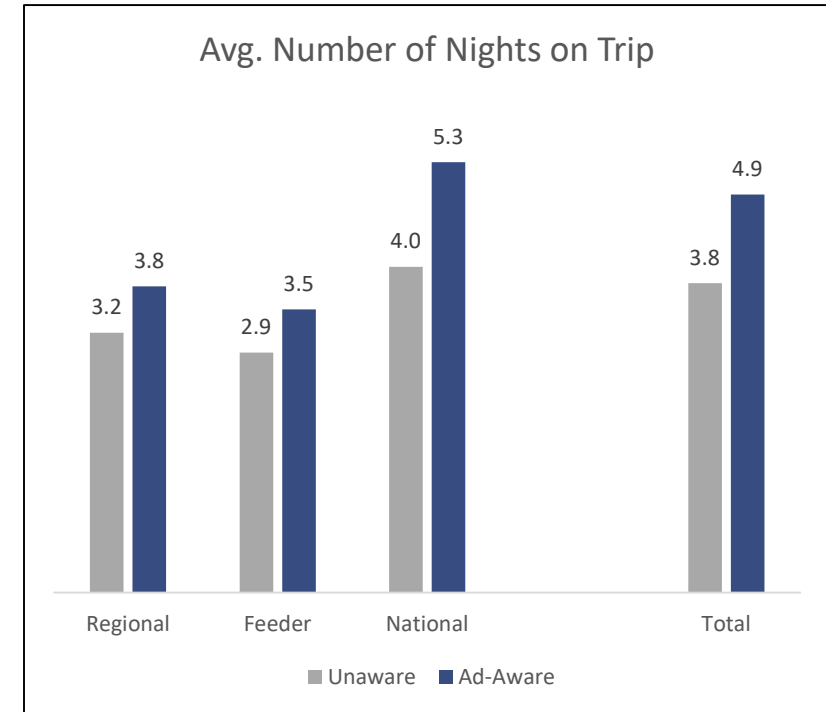
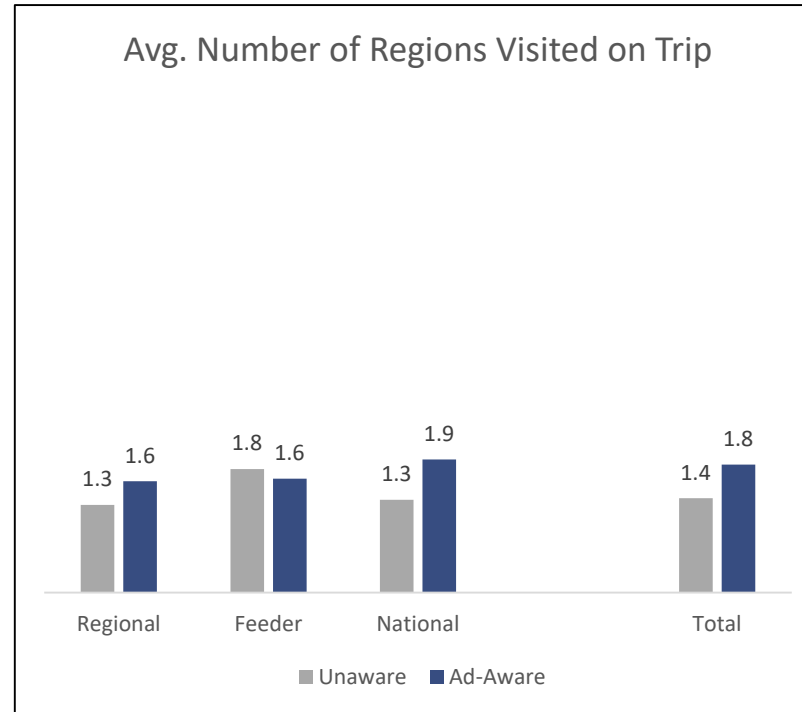
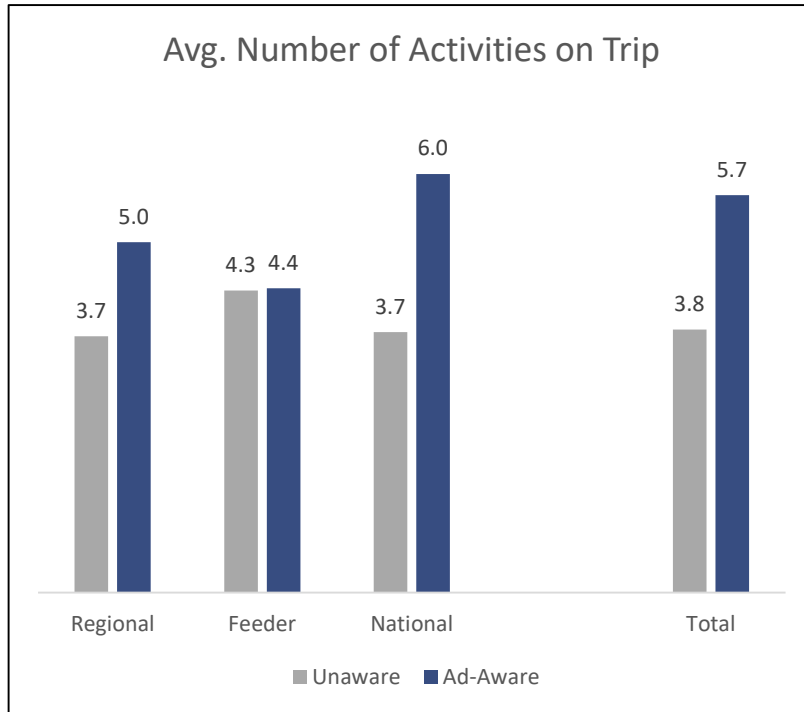


# Self-Reported Influence on Michigan Trip

- SMARInsights relies on incremental travel to calculate the trips and visitor spending influenced by the paid media. Self-reported ad influence is not part of the calculation.
- However, when asked, those who were aware of the ads and traveled to Michigan indicate that the media influences them not only to visit but also to stay longer and do more on their trips. There was some slight erosion in 2019.

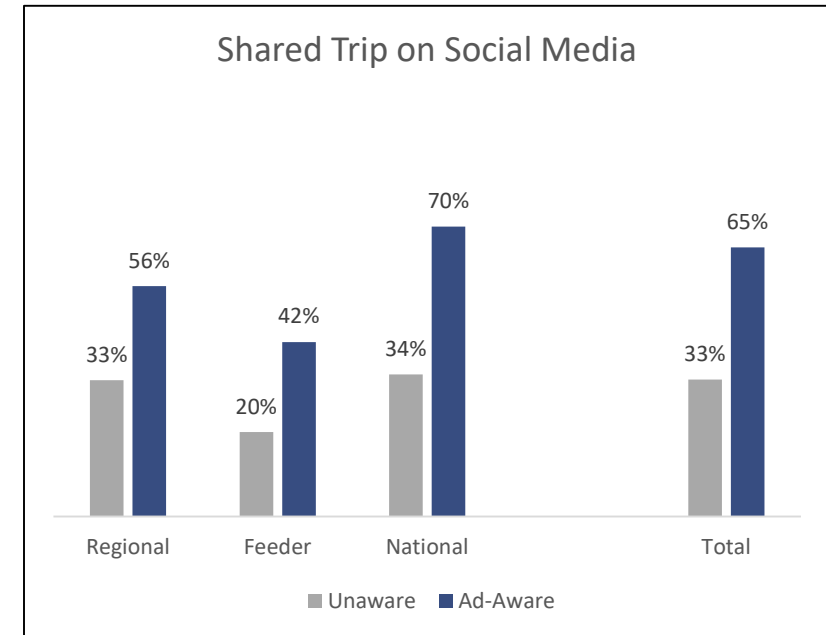
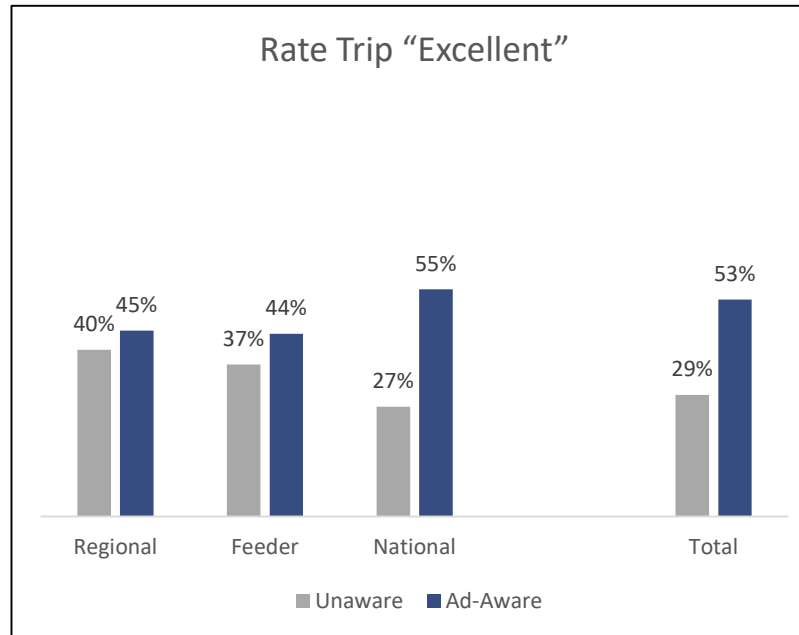
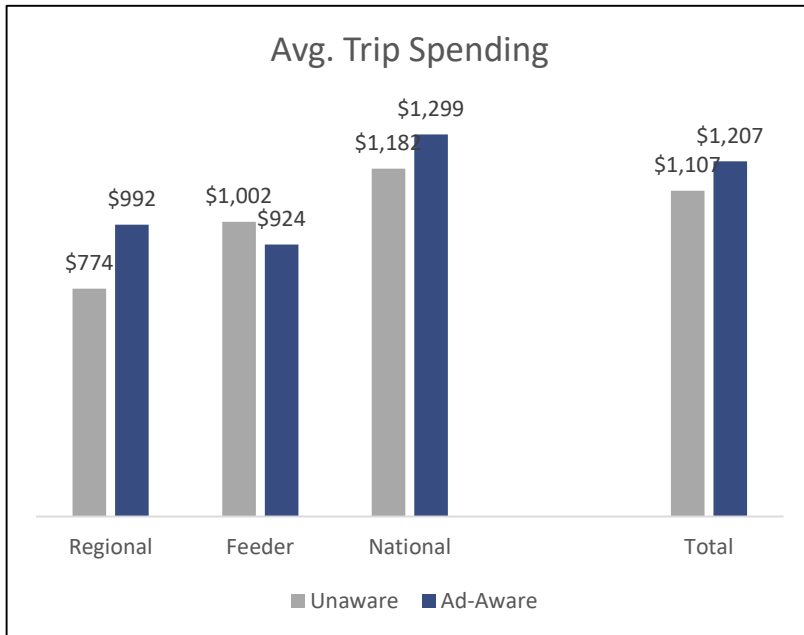


# Trip Activities, Regions Visited & Length



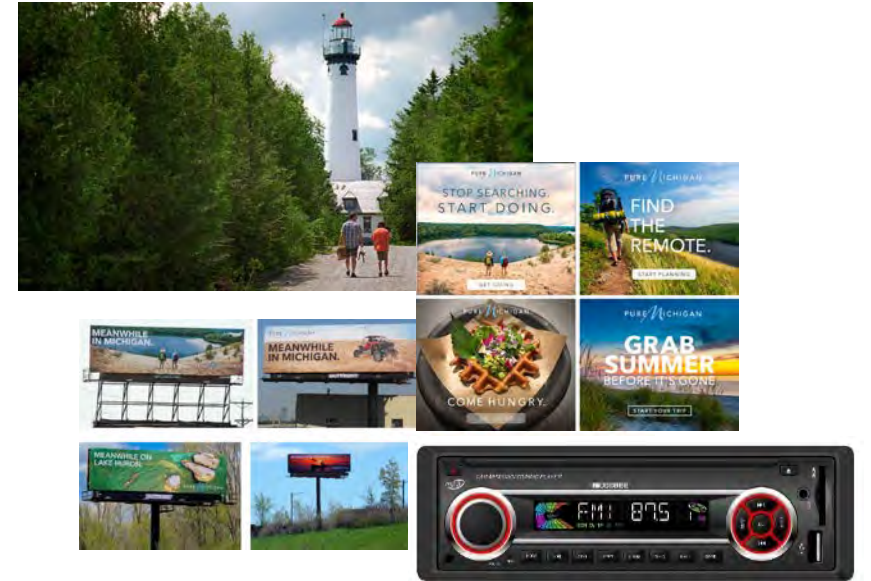
- These types of ad influence are also evident when comparing the trips of those aware of and unaware of the ads.
- Specifically, the ad-aware visitors generally do more, visit more regions, and stay longer than those not aware of the ads.

# Trip Spending, Experience & Social Sharing



- The ad-aware visitors also generally spend more, have a better trip experience, and are more likely to share their trip on social media.
- Overall, this report has revealed that the 2019 advertising had a positive impact at all stages of the travel cycle, from strengthening the state's image, to influencing travel, to enhancing the trip and producing advocacy.

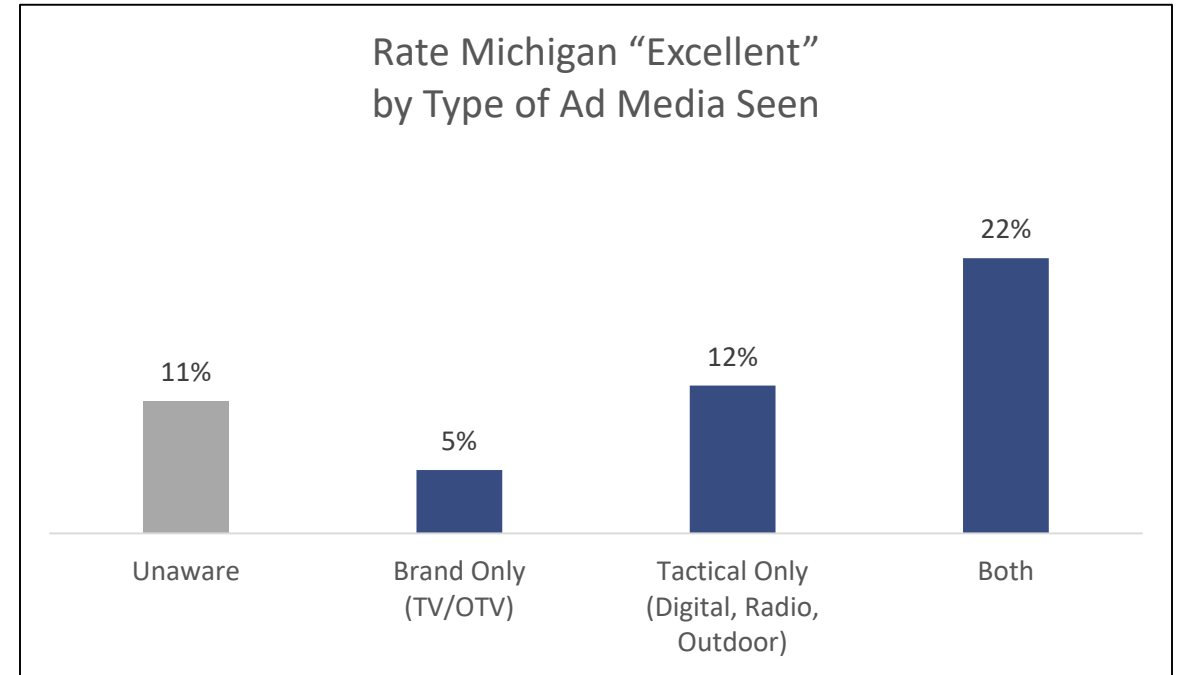
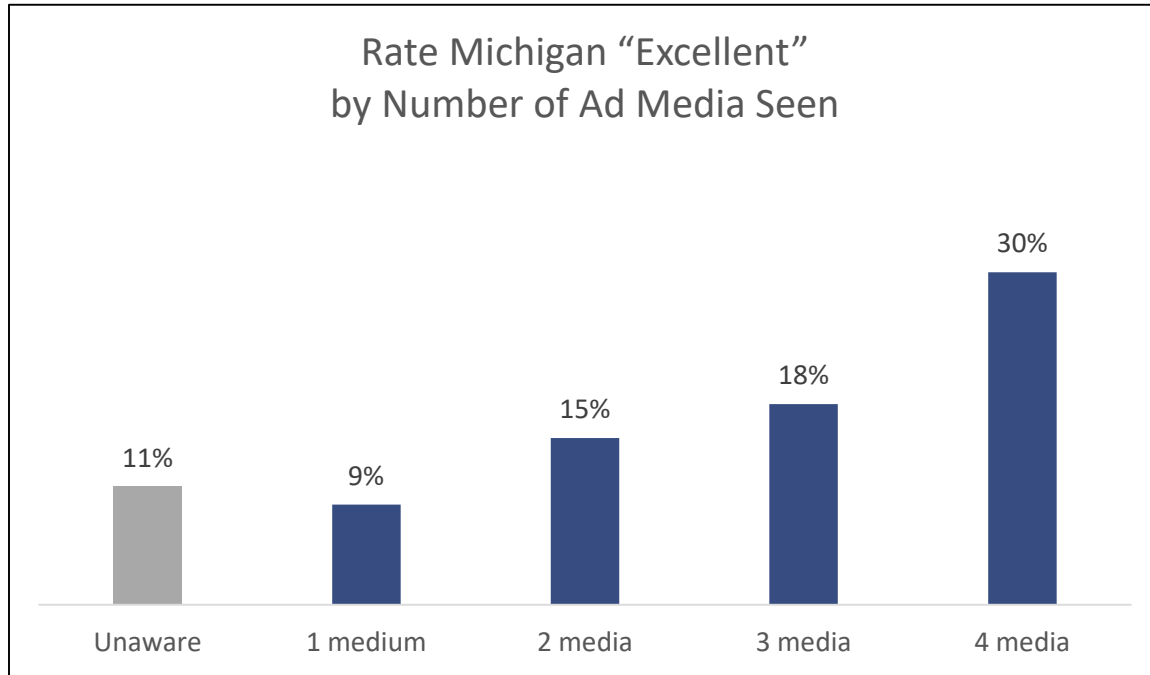




# Advertising Overlap Impact

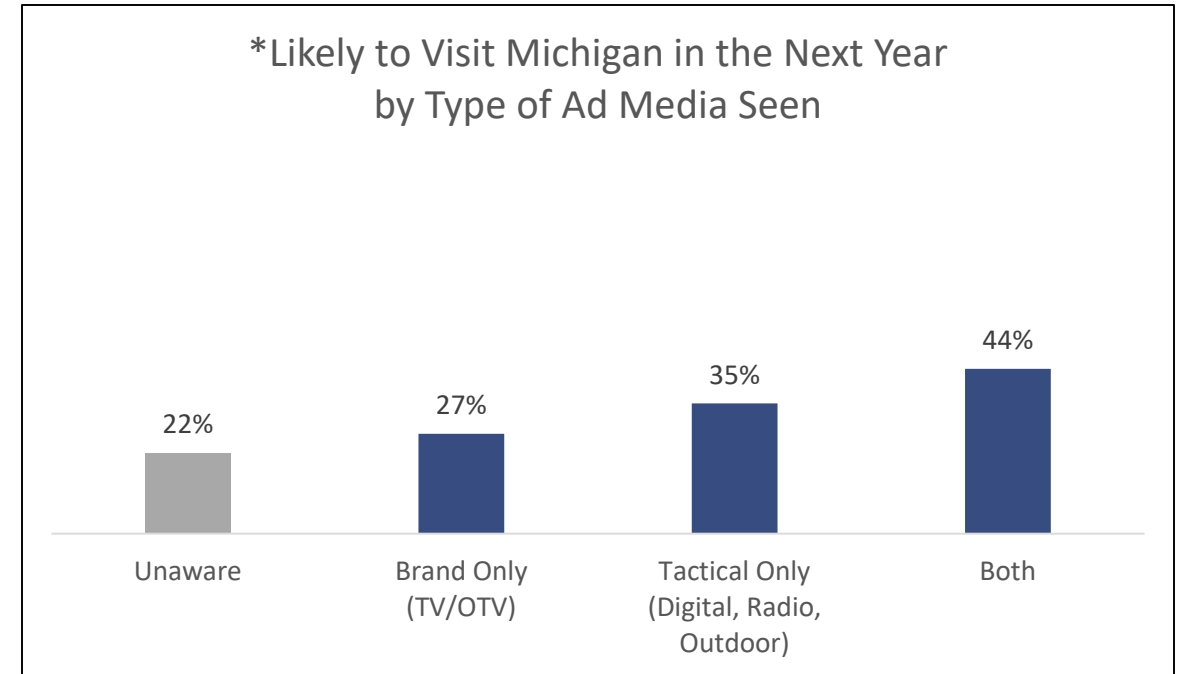
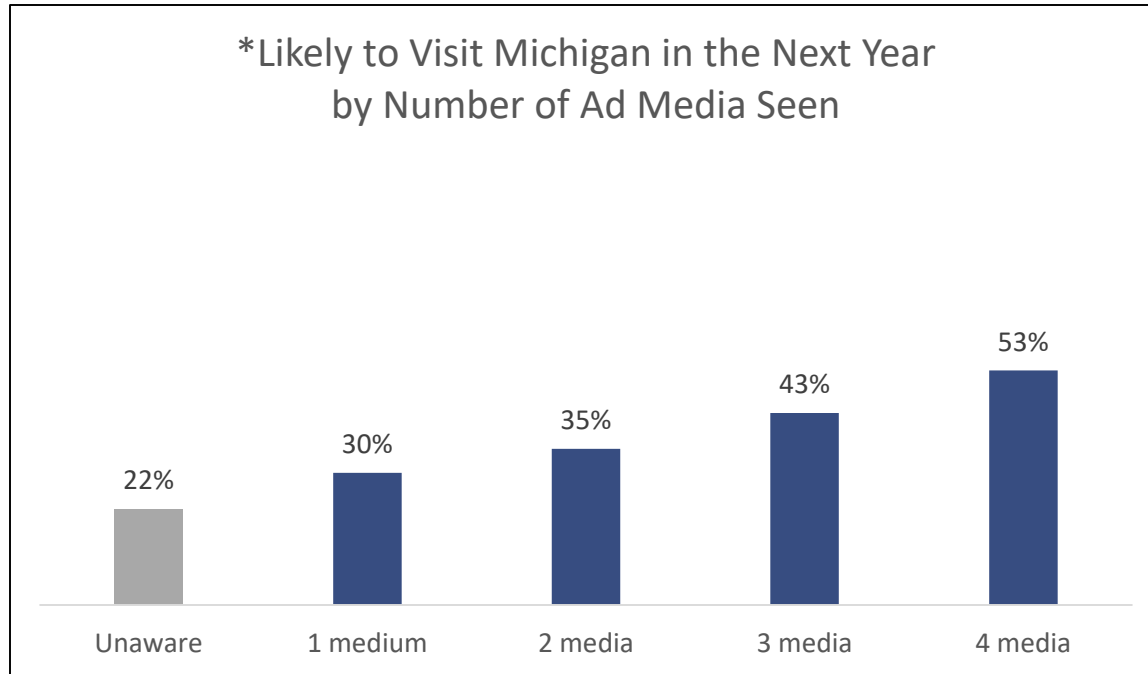
A review of whether exposure to advertising in multiple media builds Michigan perceptions and leads to more travel. Note that this analysis is among only the regional and feeder markets, as they could have been exposed to ads in all media.

# Ad Overlap Impact on Image (Regional & Feeder Markets)



- It is exposure to ads in multiple media that helps to build the overall perception of Michigan as a place to visit for a leisure trip.
- The strongest impact occurs when consumers see ads in all four media – or when they see both brand and tactical advertising.

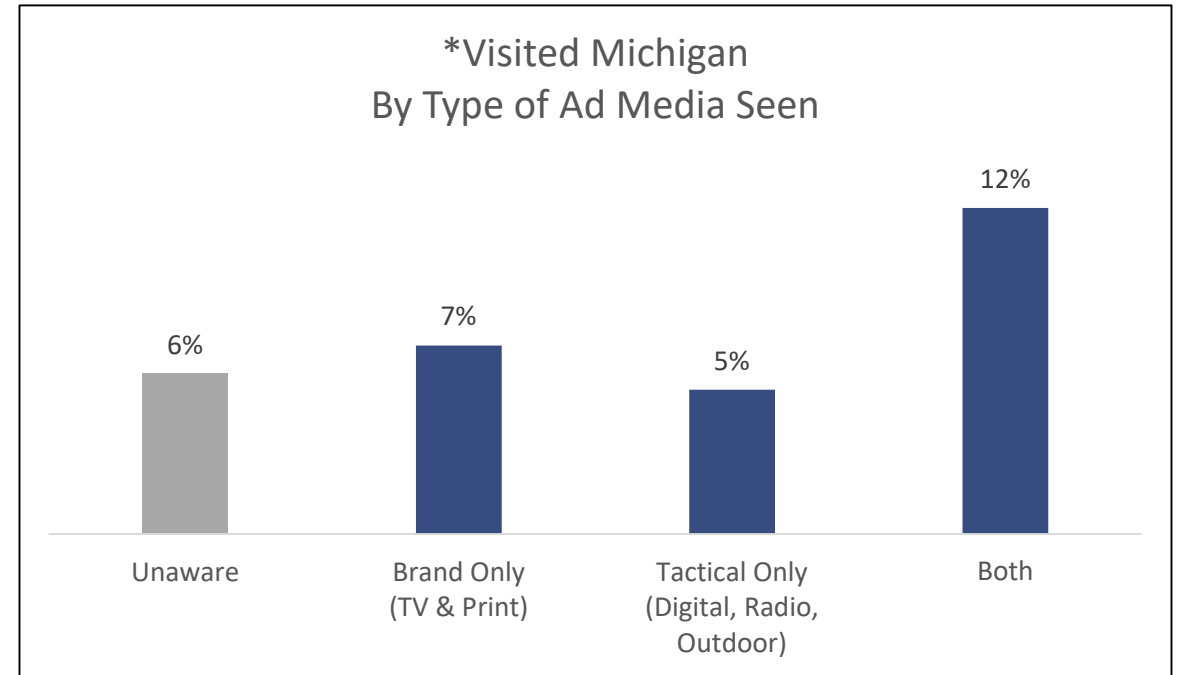
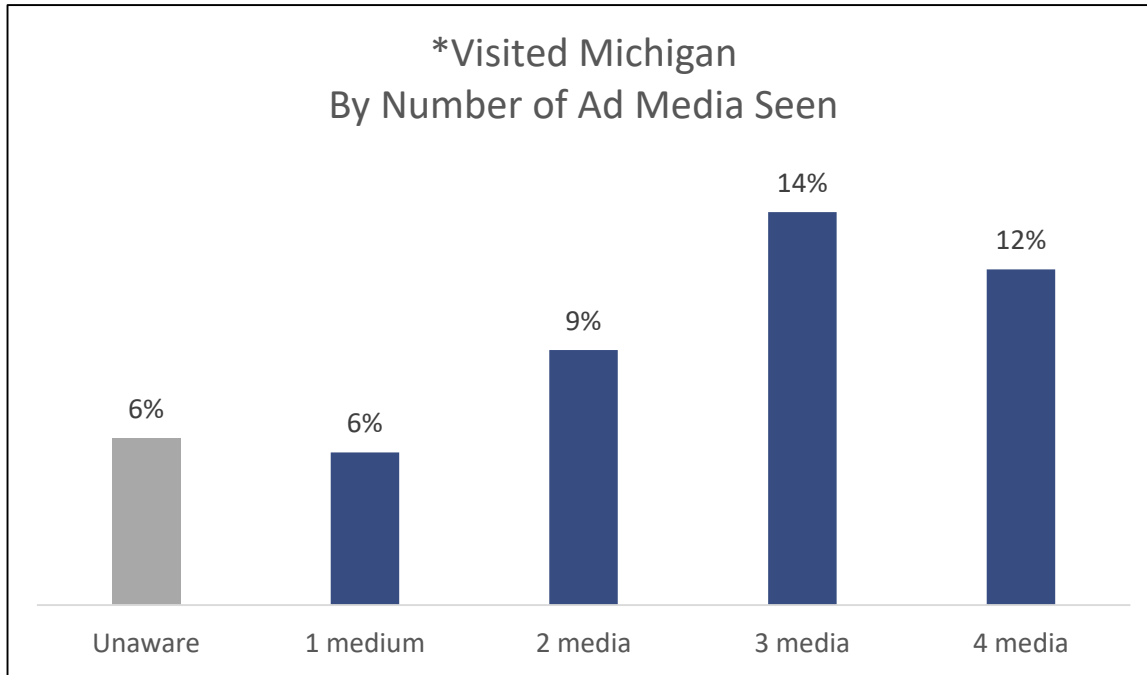
# Ad Overlap Impact on Intent (Regional & Feeder Markets)



\* Likelihood to Visit = 100% "already planning to visit," 80% "very likely to visit," and 20% "somewhat likely to visit."

- Advertising impact on likelihood to visit also increases when consumers see multiple media/types of messages.

# Ad Overlap Impact on Travel (Regional & Feeder Markets)



*\*Using the same visitor definition used for the measure of incremental travel (not counting business, VFR, annual visitors, or property owners).*

- The rate of Michigan travel jumps dramatically when consumers are exposed to advertising in three or four media, as well as when consumers see both brand and tactical advertising.
- The various advertising media all play crucial roles in influencing travel – and MEDC should continue to implement multiple-media campaigns and strive to generate overlap. In fact, MEDC could generate even more overlap and thus more impact by redistributing digital advertising dollars to reinstate print advertising.

PURE *M*ICHIGAN<sup>®</sup>

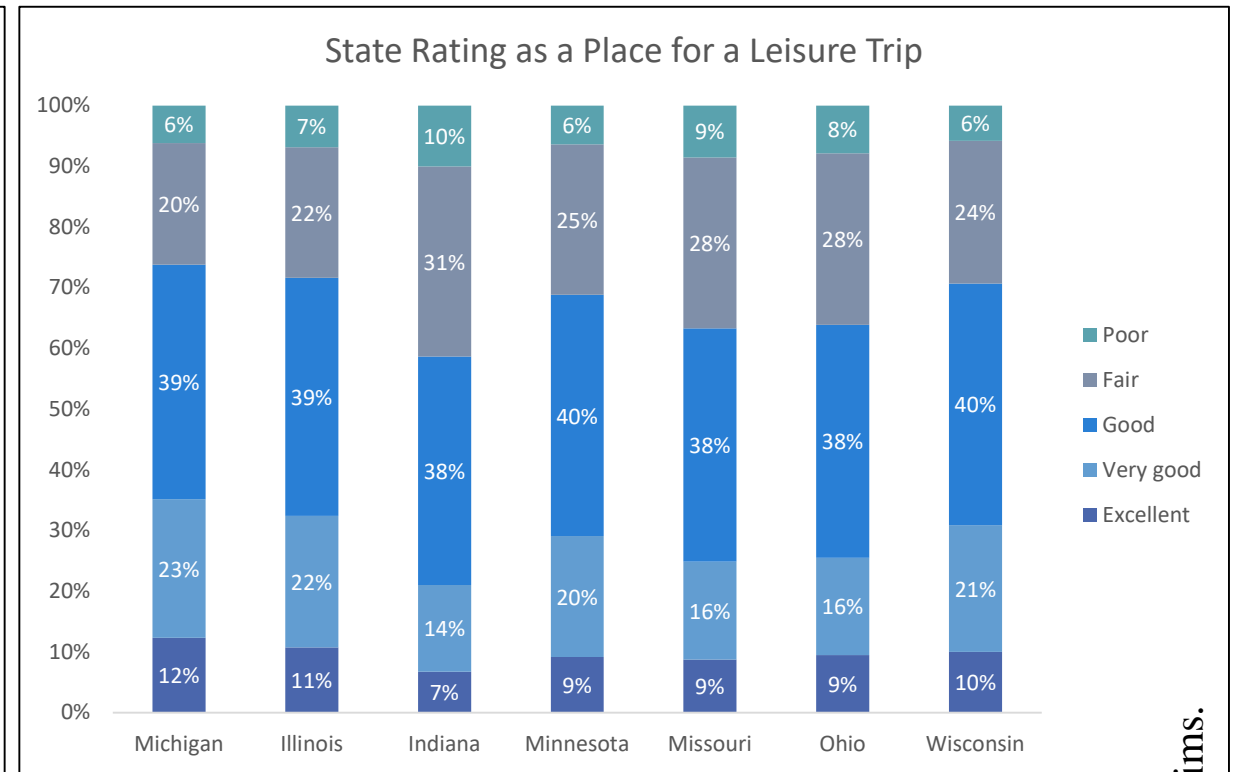
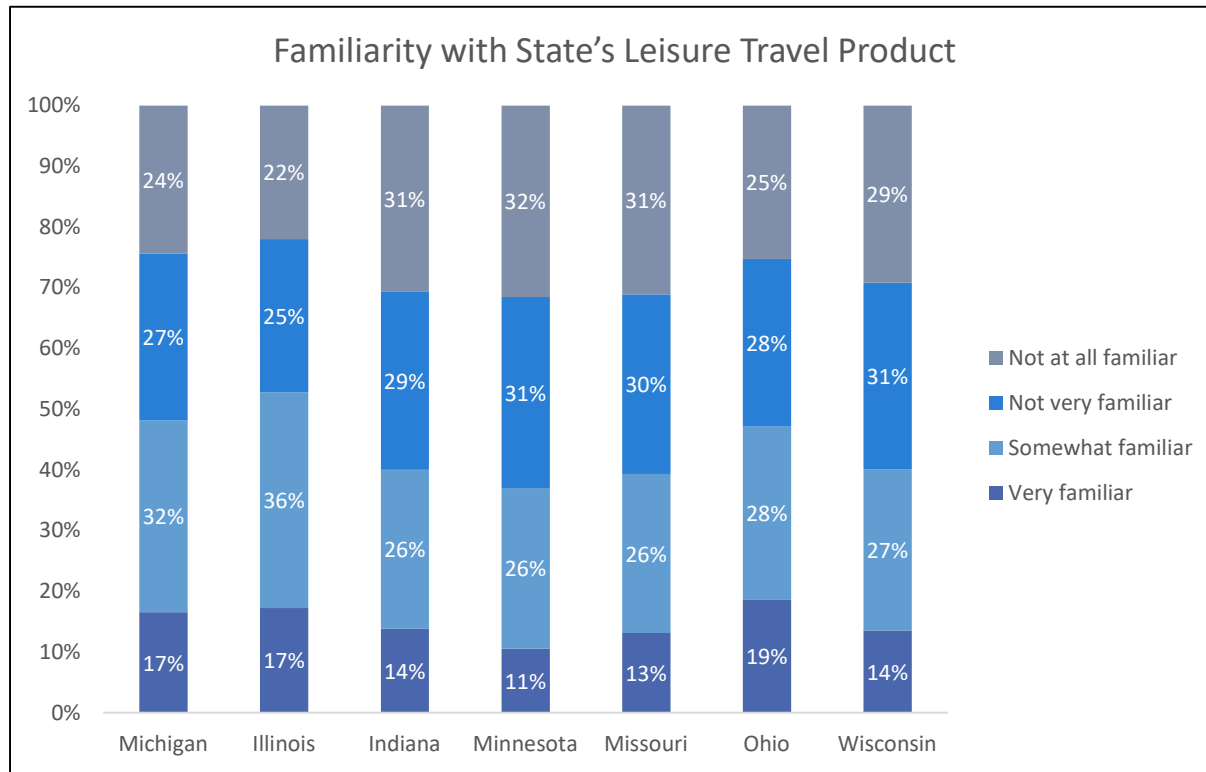


# Appendix

Michigan Image Review

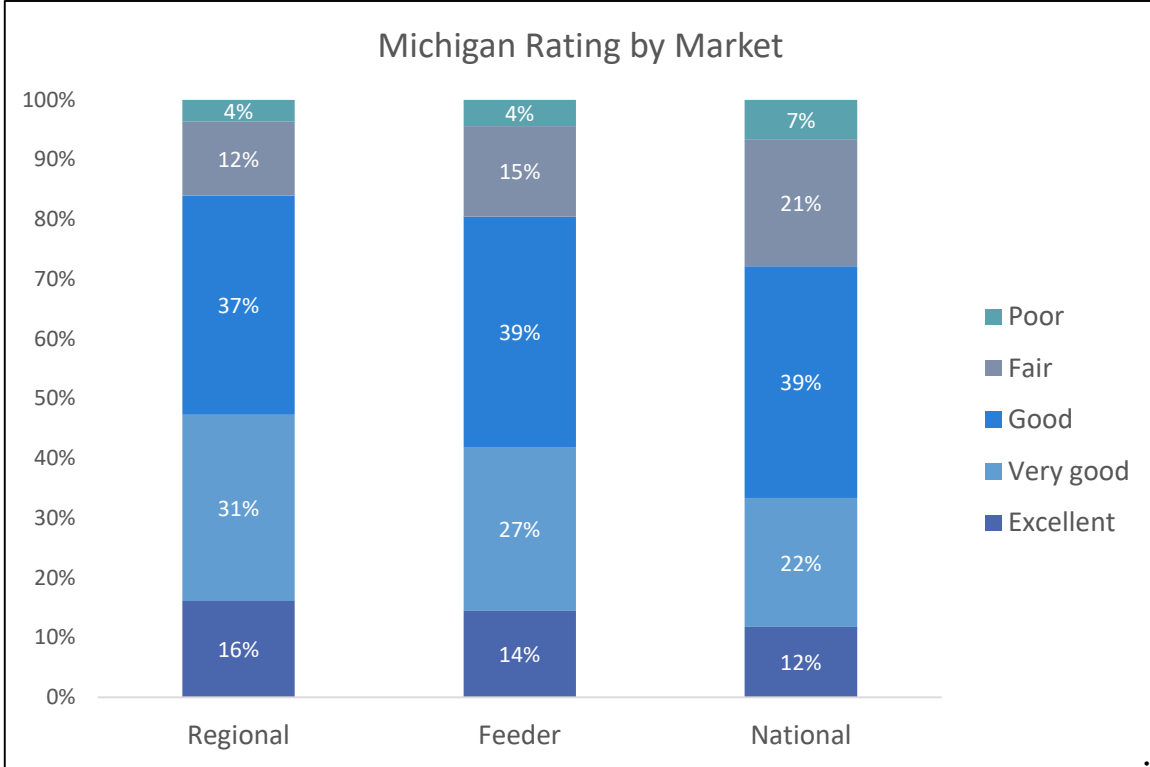
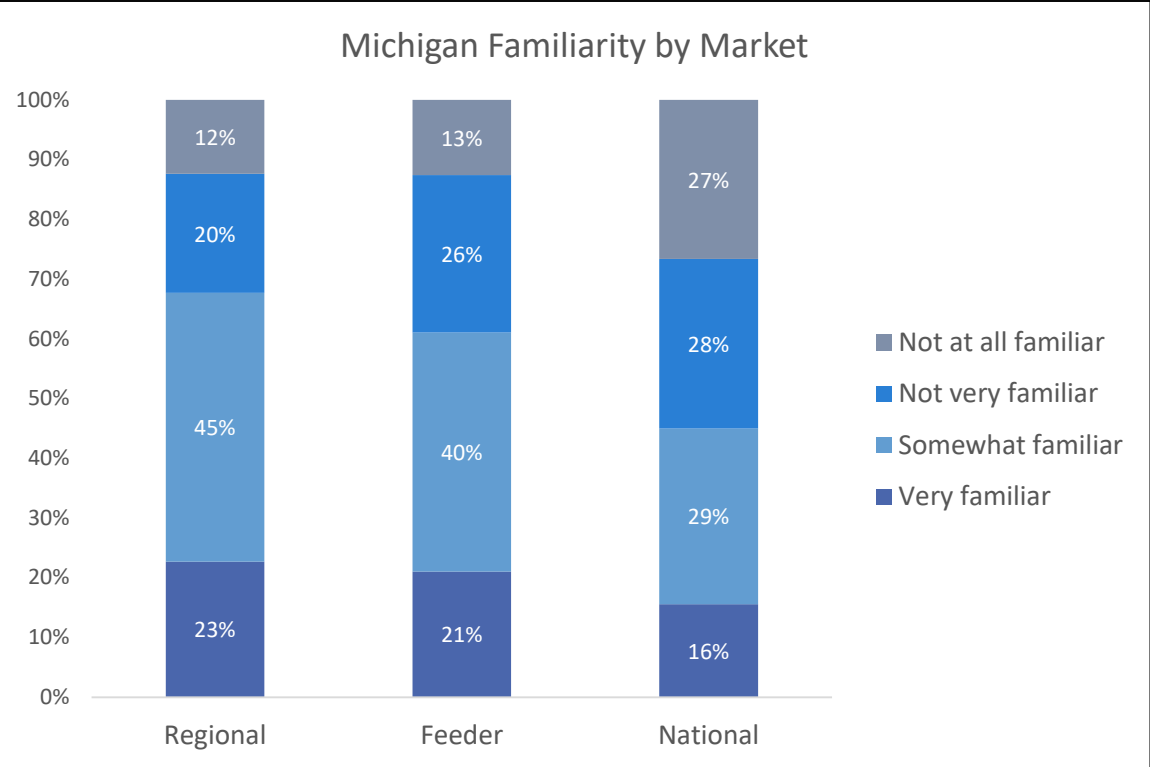
# Competitive Familiarity & Perception

- Michigan is among the top destinations of the competitive set when considering the top two box ratings for familiarity and overall rating as a place for a leisure trip.



# Michigan Familiarity & Perception by Market

- Familiarity drives perceptions, as the feeder and regional markets are more familiar with what Michigan has to offer – and they give the state stronger overall ratings.



# Perceptual Mapping Review

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- While looking at the attribute ratings in a list is helpful, it is not the way that consumers evaluate a destination. Rather than a checklist of attributes, they have an overall image of a place as it relates to other destinations. This image is to some degree based on their assessments of the individual attributes, but consumers tend to categorize states more holistically. To better approximate that type of actual consumer view, a process called perceptual mapping is used.
- Perceptual mapping is a technique that looks at the interrelationship of all the different attributes and competitors simultaneously in two-dimensional space. Perceptual mapping strives to address where the opportunities can be found for differentiation.
- Through discriminant analysis, product attributes and competitors can be plotted within the same space where proximity equates to similarity.
- For the Michigan and competitor mapping, each axis is a spectrum of product and image attributes. For this group of competitors, product is viewed from the perspective of being more developed vs. natural and more practical vs. exciting.



# Michigan Image Ratings

*Mean rating on a 5-point scale*

- Michigan's strongest perceptions continue to be fall colors, scenery, and outdoor recreation.

	Michigan 2017	Michigan 2018	Michigan 2019
Beautiful fall colors	3.95	4.05	4.01
Beautiful scenery	3.96	4.02	3.98
Offers excellent outdoor recreational activities	3.85	3.94	3.85
Great for boating / canoeing / kayaking / water sports	3.90	3.97	3.83
Excellent fishing	3.81	3.92	3.80
Good, family fun destination	3.70	3.81	3.76
Relaxing	3.72	3.81	3.74
Good place for camping	3.73	3.79	3.73
Offers a wide variety of things to do and places to see	3.72	3.85	3.73
Welcoming people / community / atmosphere	3.65	3.76	3.69
Good for hiking / backpacking	3.71	3.79	3.68
Destination with great value	3.63	3.72	3.64
Offers cultural and historical attractions	3.62	3.69	3.61
Great for bicycling / running	3.64	3.73	3.61
Offers exciting attractions and destinations	3.60	3.72	3.59
Lots of festivals and special events	3.56	3.65	3.53
Offers enjoyable urban experiences	3.44	3.58	3.51
Safe to travel anywhere in this place	3.35	3.5	3.48
Unique culinary experiences / high-quality food and beverage offerings	3.41	3.58	3.46
Excellent museums / art galleries	3.43	3.55	3.45
Unique and great selection of breweries and distilleries	3.38	3.52	3.44
Excellent climate overall	3.18	3.39	3.32
Great for golf	3.28	3.41	3.32
Good night life	3.29	3.45	3.31
Unique and great selection of wineries / vineyards	3.18	3.36	3.29

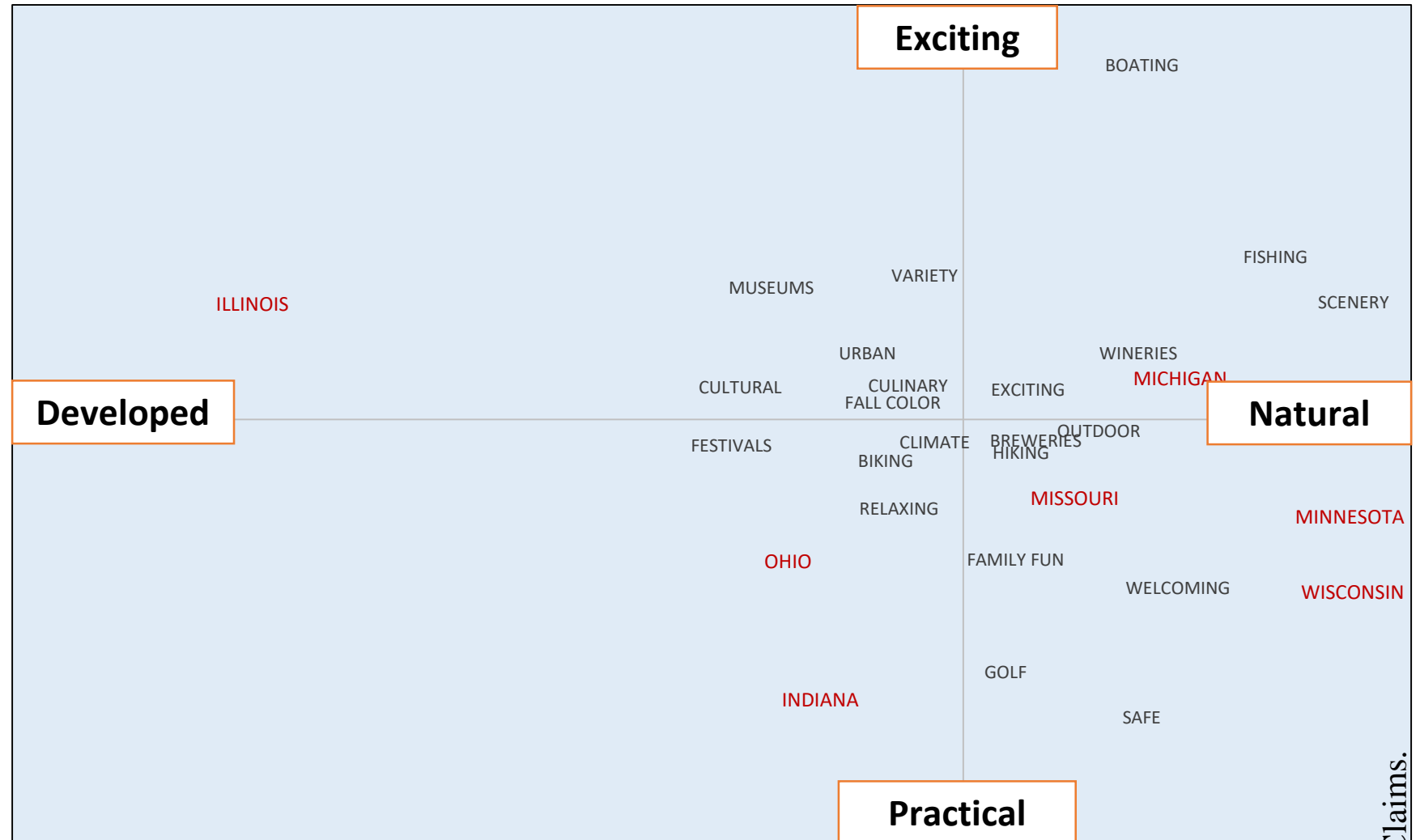
# Perceptual Map

- Perceptual mapping provides insights into consumer perceptions.
- The map is created by considering the ratings for all the destinations and highlights the position of each state and key drivers of perceptions.
- The map here shows the competitive landscape, minus the states being rated. We have not updated the map itself since it was created in 2017; rather, we have used the same map to identify how Michigan's position has changed rather than how the competitive landscape has shifted.
- The horizontal axis is defined by developed vs. natural. The vertical axis is defined by exciting vs. practical.



# Competitive Position

- Michigan is the only competitor identified as natural and exciting. It is often difficult, especially for Midwestern destinations, to offer differentiation from competitors with similar product.
- Certainly, the position of Pure Michigan aligns with the Natural quadrant, but the state has been able to align natural with exciting rather than practical experiences like a number of competitors.
- Wisconsin, Minnesota and Missouri are all perceived as both natural and practical. Wisconsin and Minnesota's positions are very similar and pulled by the natural product. Although Missouri also falls into this quadrant, it is seen as offering more urban experiences than the other two states.
- Ohio and Indiana are positioned as developed and practical.
- Illinois is defined by Chicago and is perceived as developed and exciting. It is pulled to an extreme position on the map due to museums, nightlife and cultural attractions.



# Potential Michigan Position

- The 2017 report uncovered that a shift toward the “developed” space improves consumers’ interest in visiting Michigan (the result of plotting Michigan on the map based on the state’s ratings among those likely to visit).
- MEDC acted on this insight in 2018, amplifying the promotion of culinary, cultural and urban attractions.
- The perceptual map shows that Michigan did achieve a slight shift in the desired direction in 2018.
- However, in 2019 the state shifted toward a more “natural” position, which aligns with the messages and imagery in the “Dark Skies” and winter ads.
- Michigan certainly still has a strong and differentiated position that has not changed dramatically in the past three years. But this exercise does indicate some opportunity to strengthen the overall position by strengthening the developed position.



# Michigan Trip Activity Classification

- Another approach used to prioritize marketing messaging is activity classification.
- The Michigan leisure trip activities that have relatively high rates of participation and motivation offer the most potential for paid media marketing. These activities are in the top right quadrant and include outdoor adventure, water activities, sightseeing, beaches/dunes/coastal activities, quaint towns, museums/art galleries, and state or national parks.
- The activities in the bottom right quadrant have lower rates of participation, but strong motivation – and thus offer potential for precisely targeted niche marketing. These include camping, fishing, vineyards/breweries, authentic culinary experiences, live entertainment, nightlife, lighthouses, and cultural/historical attractions.
- The activities in the top left quadrant have relatively high rates of participation but are less motivating. These types of activities are candidates for in-destination marketing materials.





# Appendix

Questionnaire

# Questionnaire

Pure Michigan  
2019 Advertising Effectiveness Survey  
December 2019

ZIP. What is your ZIP code? \_\_\_\_\_

S1. Who in your household is primarily responsible for making decisions concerning travel destinations?

1. Me
2. My spouse
3. Jointly with my spouse
4. Someone else

S2. Please indicate if each of the following applies to you...

[ROTATE]	Yes	No
I regularly use social media like Facebook, Twitter or Instagram	<input type="checkbox"/>	<input type="checkbox"/>
I normally take at least one leisure trip a year that involves an overnight stay or is at least 50 miles from home (IF =0, TERMINATE AFTER SCREENING QUESTIONS)	<input type="checkbox"/>	<input type="checkbox"/>
I regularly engage in some form of physical exercise like walking, biking or participating in sports	<input type="checkbox"/>	<input type="checkbox"/>
I use video streaming services like Hulu or Netflix	<input type="checkbox"/>	<input type="checkbox"/>

Q9e. What is your age? \_\_\_\_

S3. Which of the following social networking sites do you use?

- Facebook
- Instagram
- Pinterest
- Twitter
- YouTube
- Snapchat
- None of these

IF NONE, DO NOT ASK VISITORS Q17 AND Q17A (ABOUT SOCIAL MEDIA SHARING)

TERMINATE IF ANY OF THE FOLLOWING: S1 = 2 OR 4  
S2 = LEISURE TRAVEL = NO  
Q9e <18

T1. How many vacation or adventure trips has you taken in the past 12 months? \_\_\_\_

T2. How much you do agree that each of the following describes you?

ROTATE	Disagree Strongly	Disagree Somewhat	Neither Agree nor Disagree	Agree Somewhat	Agree Strongly
I am adventurous					
I am willing to make travel plans with unknown companions					
I am consumed with getting the best deal					
I am good at convincing others try new things					
I vacation somewhere different every time					
I like driving					
I enjoy spending time with my family					
I enjoy taking risks					
I prefer food presented as an art form					
I consider myself interested in the arts					
I am interested in other cultures					
I often go on long car trips for vacation					
I like vacations where activities organized for me					
Friends look to me to organize activities					
I prefer travel in the U.S. opposed to foreign destinations					
I'd rather take two/three short quick vacations than one long one					
I love the idea of traveling abroad					
I like to travel the unbeaten path					
I like to try new things no one else has					
Vacation experiences differentiate me from my friends					

Q1. Please indicate how familiar you are with each of the following states in terms of what they have to offer as a place to visit on a leisure or non-business trip.

ROTATE	Not at all familiar	Not very familiar	Somewhat familiar	Very familiar
Michigan				
Illinois				
Indiana				
Minnesota				
Missouri				
Ohio				
Wisconsin				

Q2. How would you rate each of these states as a place to visit for a leisure trip? If you are not very familiar with the state, please rate it based on whatever you know or have heard.

ROTATE	Poor	Fair	Good	Very good	Excellent
Michigan					
Illinois					
Indiana					
Minnesota					
Missouri					
Ohio					
Wisconsin					

Q2a. How likely is it that you would recommend each of these states to a friend or colleague as a place to visit for a leisure trip?

ROTATE	Not at all likely	1	2	3	4	5	6	7	8	9	Extremely likely
Michigan											10
Illinois											
Indiana											
Minnesota											
Missouri											
Ohio											
Wisconsin											

Q3. How likely are you to visit the following states for a leisure trip in the next year?

ROTATE	Not at all likely	Not very likely	Somewhat likely	Very likely	Already planning a trip
Michigan					
Illinois					
Indiana					
Minnesota					
Missouri					
Ohio					
Wisconsin					

Q3a. How likely are you to visit the following states for a leisure trip in the next TWO years?

ROTATE	Not at all likely	Not very likely	Somewhat likely	Very likely	Already planning a trip
Michigan					
Illinois					
Indiana					
Minnesota					
Missouri					
Ohio					
Wisconsin					

Q4. Please tell us about your past leisure travel to the following states.

ROTATE	I have visited this state for a leisure trip	# of trips in the past five years [ALLOW ONLY IF VISITED IN PAST]
Michigan		
Illinois		
Indiana		
Minnesota		
Missouri		
Ohio		
Wisconsin		
None of these		

# Questionnaire

Q4a. Please tell us about your past leisure travel to the following states.

ROTATE	I have visited this state in 2019 [ALLOW ONLY IF EVER VISITED]	# of trips in 2019 [ALLOW ONLY IF VISITED IN 2019]
Michigan		
Illinois		
Indiana		
Minnesota		
Missouri		
Ohio		
Wisconsin		

ASK Q5 AND Q5A FOR MICHIGAN IF NOT "NOT AT ALL FAMILIAR".

Q5. Please consider the following series of descriptions that could be used to describe travel destinations. Please rate how much that you agree that each statement describes Michigan. If you are not very familiar with Michigan, please rate it based on whatever you know or have heard.

ROTATE LIST. SPLIT INTO TWO TABLES	Does not describe at all	Does not describe very well	Neutral	Somewhat describes	Completely describes
Destination with great value					
Offers exciting attractions and destinations					
Offers a wide variety of things to do and places to see					
Good night life					
Good family fun destination					
Offers excellent outdoor recreational activities					
Offers cultural and historical attractions					
Unique culinary experiences / high-quality food and beverage offerings					
Beautiful scenery					
Lots of festivals and special events					
Relaxing					
Unique and great selection of wineries / vineyards					
Unique and great selection of breweries and distilleries					
Excellent fishing					
Great for golf					
Great for bicycling / running					
Good for hiking / backpacking					
Great for boating / canoeing / kayaking / water sports					
Good place for camping					
Excellent climate overall					
Beautiful fall colors					
Welcoming people / community / atmosphere					
Excellent museums / art galleries					
Safe to travel anywhere in this place					
Offers enjoyable urban experiences					

Q5a. How much do you agree that Michigan is a good place to...?

ROTATE	Disagree strongly	Disagree	Neutral	Agree	Agree strongly
live					
start a career					
start a business					
attend college					
purchase a vacation home					
retire					
relocate a business					

IF VISITED MICHIGAN IN THE PAST YEAR FROM Q4A ASK Q6-Q19 ABOUT THEIR TRIP. OTHERWISE SKIP TO Q20.

Now, please give us some information about the leisure trip(s) you took in 2019 to Michigan.

Q6. What month(s) did you visit Michigan? Select all that apply.

- January 2019
- February 2019
- March 2019
- April 2019
- May 2019
- June 2019
- July 2019
- August 2019
- September 2019
- October 2019
- November 2019
- December 2019

IF MULTIPLE TRIPS: For the following questions please think about the trip to Michigan that you consider your primary leisure vacation.

Q7. Overall, how would you rate the experience you had in Michigan?

- Excellent
- Very good
- Good
- Fair
- Poor

Q8. How far in advance did you begin to plan this trip?

- Less than 1 week
- 1 to 2 weeks
- 3 to 4 weeks
- 1 to 2 months
- 3 to 4 months
- 5 to 6 months
- 7 months or more

Q8a. How far in advance did you book this trip?

- Less than 1 week
- 1 to 2 weeks
- 3 to 4 weeks

- 1 to 2 months
- 3 to 4 months
- 5 to 6 months
- 7 months or more

IF MULTIPLE TRIPS: For the following questions please think about your last leisure trip to Michigan.

Q9. What was the main purpose of your last leisure trip to Michigan?

- Visit family and friends
- Visit a specific attraction
- Visit a specific event
- Family vacation
- Participate in outdoor recreation
- Extension of business trip
- Other, please specify \_\_\_\_\_

Q10. Including yourself, how many people were on this trip? \_\_\_\_\_

IF Q10 >1, ASK Q11

Q11. How many children under the age of 18 years old were in your travel party? \_\_\_\_\_

Q12. How many nights did you stay in Michigan on this trip? \_\_\_\_\_

IF STAYED OVERNIGHT, ASK Q13

Q13. What type of accommodations did you use?

- Hotel/motel
- Bed & breakfast
- Campground/RV
- Timeshare
- My 2nd home/apartment/condo
- Home/apartment/condo (Stayed with family and/or friends)
- Home sharing such as Airbnb
- Other, please specify \_\_\_\_\_

NOTE TO ANALYST: ATTEMPT TO DETERMINE INCREMENTAL TRAVEL FOR PARTNERS BY USING REGION: ANN ARBOR, GRAND RAPIDS, GREAT LAKES BAY (REGION 4) AND TRAVERSE CITY

Q14. Which of the following areas did you visit? Select all that apply (Please reference map) SHOW MICHIGAN REGIONS MAP

- Region 1: Upper Peninsula including Marquette, Escanaba, Munising, Sault Ste Marie & Mackinac Island
- Region 2: including Traverse City, Charlevoix, Mackinaw City & Cadillac
- Region 3: including Gaylord, Cheboygan & Alpena
- Region 4: including Grand Rapids, Muskegon, Grand Haven & Holland
- Region 5: including Frankenmuth, Bay City, Saginaw, Midland & Bay City
- Region 6: including Flint, Bad Axe & Port Austin
- Region 7: Lansing
- Region 8: Kalamazoo, Battle Creek, Benton Harbor & Niles
- Region 9: Ann Arbor, Ypsilanti & Jackson
- Region 10: Detroit, Sterling Heights & St. Clair Shores



# Questionnaire

Q15. Which of the following activities did you visit or participate in as a part of your trip? ROTATE. Select all that apply.

- Visit state or national parks
- Camping
- Outdoor adventure (hiking, biking, backpacking, running)
- Trails
- Water activities (boating/swimming/canoeing/kayaking/water sports)
- Fishing
- View wildlife/birds
- Play golf
- Visit a spa
- Touring/sightseeing
- Visit a winery/vineyard or brewery
- Experience unique local dining
- Experience authentic culinary experiences
- Shopping
- Attend concert, theater or performing arts
- Visit a museum or art gallery
- Cultural/historical attractions
- Urban experience
- Beaches/dunes/costal activities
- Attend fair/festival
- Antiquing
- Visit quaint towns
- Farm to table (Fertile Ground)
- Lighthouses
- Visit family or friends
- Lake cruises
- Nightlife/live music/dancing
- Other, please specify \_\_\_\_\_
- None of these

Q16. SHOW ACTIVITIES CHOSEN IN Q15 PLUS "NONE" AND ASK

Of these activities, please indicate if there were any that were a major influence when you decided to visit Michigan. You may choose up to 3.

IF S3 = NONE, DO NOT ASK Q17 AND Q17A

Q17. Did you share your most recent Michigan vacation experience on any social networking sites?

- Yes
- No

IF Q17 = YES, ASK Q17A

Q17a. Which of the following social networking sites did you use to share your experience?

- Facebook
- Instagram
- Pinterest
- Twitter
- YouTube
- Review websites (Yelp/TripAdvisor, etc.)
- Blog
- Snapchat
- Other, please specify \_\_\_\_\_

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Q19. To better understand the economic impact of tourism, we are interested in finding out the approximate amount of money you and other members of your travel party spent on your most recent trip while in Michigan. Please estimate how much your travel party spent in total on...

- a. Lodging \_\_\_\_\_
- b. Meals/food/groceries \_\_\_\_\_
- c. Attractions \_\_\_\_\_
- d. Recreational expenses such as boat rental, golf fees, etc. \_\_\_\_\_
- e. Shopping \_\_\_\_\_
- g. Entertainment such as admission fees to events or shows \_\_\_\_\_
- h. Transportation to Michigan \_\_\_\_\_
- i. Transportation within Michigan \_\_\_\_\_
- j. Tours \_\_\_\_\_
- k. Other \_\_\_\_\_

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Ad Awareness Section (ROTATE)

SHOW ON SEPARATE PAGE:

At this time, we are going to show you some various forms of advertising. We would like you to take a few moments to review the ads and answer the corresponding questions.

TV

TV QUESTION:

Have you seen this video ad or one that is similar to this video ad before?

- Yes
- No

F:\Ads Master\Michigan\2019\ROI\Ads to Use\TV

Snow Day/Let's Winter

SHOW 1 OF THESE 2 ADS TO ALL MARKETS EXCEPT REMAINING NATIONAL AND SOUTHERN ONTARIO:

Facts.mp4

Vimeo # - 380121392

Loud.mp4

Vimeo # - 380123188

SHOW TO SOUTHERN ONTARIO MARKET ONLY:

Loud\_BUSA\_.mp4

Vimeo # - 380123538

Regional Meanwhile in Michigan

SHOW 2 OF THESE 4 ADS TO ALL MARKETS EXCEPT REMAINING NATIONAL AND SOUTHERN ONTARIO. STOP SHOWING ADS ONCE THEY HAVE SEEN ONE:

Deep Breath\_ZTMT0022800H\_Scenic route tag.mov

Vimeo # - 380120327

HarvestTime\_ZTMT0055000H.mp4

Vimeo # - 380122880

Open Road\_ZTMT0077000H.wmv

Vimeo # - 380123985

Small Batches\_ZTMT0172000H (2).mp4

Vimeo # - 380125065

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# Questionnaire

## **National**

SHOW 3 OF THESE 7 ADS TO ALL MARKETS. STOP SHOWING ADS ONCE THEY HAVE SEEN ONE:

14Clubs\_Rev\_golf tag\_ZTMT0232000H.mov  
Vimeo # - 380117163

Along The Way\_ZTMT0171000H.mp4  
Vimeo # - 380118360

Fertile Ground\_ZTMT0173000H.mp4  
Vimeo # - 380121649

Perfect Spot\_ZTMT0217000H\_Lake effect tag.mp4  
Vimeo # - 380124340

Perfect Summer\_ZTMT0215000H\_Lake effect tag.mp4  
Vimeo # - 380124739

Wish You Were Here\_ZTMT0235000H.mov  
Vimeo # - 380125965

Dark Sky\_ZTMT0322000H.mp4  
Vimeo # - 380120101

## **National Partner**

SHOW 2 OF THESE 5 ADS TO ALL MARKETS. STOP SHOWING ADS ONCE THEY HAVE SEEN ONE:

Ann Arbor\_Different REV 2\_ZTMT0318000H (2).mov  
Vimeo # - 380119093

GLBR\_Summer Breeze\_ZTMT0041000H.mov  
Vimeo # - 380122117

Grand Rapids\_Blank Canvas REV\_ZTMT0272000H.mp4  
Vimeo # - 380122646

Traverse City\_True North\_ZTMT0056000.wmv  
Vimeo # - 380125358

Upper Peninsula\_Heart Rate\_ZTMT0305000H.mp4  
Vimeo # - 380125585

## **Digital**

I:\Ads Master\Michigan\2019\ROI\Ads to Use\Digital

SHOW ALL DIGITAL ADS TO ALL MARKETS.

## **Snow Day/Let's Winter**

SHOW THIS GROUP OF BANNER ADS TO EVERYONE:

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Lets Winter Group.jpg

Have you seen any of these or similar online ads before?

Yes  
No

SHOW 1 OF THESE 2 ADS TO FACEBOOK USERS FROM S3:

Anticipation\_Preroll\_09 Facebook.mov  
Vimeo # - 380266167

ZTMT0315000H\_Lets Winter\_FB\_JAN FEB Facebook.mp4  
Vimeo # - 380269932

Have you seen this or similar Facebook video ads before?

Yes  
No

SHOW 1 OF THESE 2 ADS TO EVERYONE:

PURE\_MICHIGAN\_WITH\_ENDCARD.mp4  
Vimeo # - 380268784

PURE\_MICHIGAN\_WITH\_ENDCARD\_V2.mp4  
Vimeo # - 380269225

Have you seen this or similar online video ads before?

Yes  
No

SHOW THIS GROUP OF PINTEREST ADS TO PINTEREST USERS FROM S3:

Pinterest Winter Group.jpg  
Have you seen any of these or similar ads on Pinterest before?

Yes  
No

SHOW THIS GROUP OF INSTAGRAM ADS TO INSTAGRAM USERS FROM S3:

Instagram Winter Group.jpg  
Have you seen any of these or similar ads on Instagram before?

Yes  
No

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## **Meanwhile in Michigan**

SHOW 1 OF THESE 4 ADS TO EVERYONE:

CTV Biking.mp4  
Vimeo # - 380266505

CTV Colors.mp4  
Vimeo # - 380267454

CTV Line1.mp4  
Vimeo # - 380267820

CTV Suit.mp4  
Vimeo # - 380268157

Have you seen this video ad or one that is similar to this video ad before?

Yes  
No

SHOW THIS GROUP OF BANNER ADS TO EVERYONE:

MIM Fall Banners Group.jpg  
Have you seen any of these or similar online ads before?

Yes  
No

SHOW THIS GROUP OF BANNER ADS TO EVERYONE:

MIM Summer Banners Group.jpg  
Have you seen any of these or similar online ads before?

Yes  
No

SHOW THIS GROUP OF PINTEREST ADS TO PINTEREST USERS FROM S3:

Pinterest Summer Group.jpg  
Have you seen any of these or similar ads on Pinterest before?

Yes  
No

SHOW THIS GROUP OF PINTEREST ADS TO PINTEREST USERS FROM S3:

Pinterest Fall Group.jpg  
Have you seen any of these or similar ads on Pinterest before?

Yes  
No

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# Questionnaire

SHOW THIS GROUP OF FACEBOOK/INSTAGRAM ADS TO FACEBOOK OR INSTAGRAM USERS FROM S3:

Facebook & Instagram Fall Group.jpg  
 Have you seen any of these or similar ads on Facebook or Instagram before?  
 Yes  
 No

**Dark Sky**

SHOW THIS GROUP OF ADS TO EVERYONE:

Dark Sky Weather Channel Group.jpg  
 Have you seen any of these or similar ads on the Weather Channel before?  
 Yes  
 No

SHOW THIS GROUP OF PINTEREST ADS TO PINTEREST USERS FROM S3:

Dark Sky Pinterest Blogs Group.jpg  
 Have you seen any of these or similar ads on Pinterest before?  
 Yes  
 No

SHOW THIS GROUP OF INSTAGRAM ADS TO INSTAGRAM USERS FROM S3:

Dark Sky Instagram Group.jpg  
 Have you seen any of these or similar ads on Instagram before?  
 Yes  
 No

SHOW THIS GROUP OF BANNER ADS TO EVERYONE:

Always On Group.jpg  
 Have you seen any of these or similar online ads before?  
 Yes  
 No

SHOW THIS GROUP OF BANNER ADS TO EVERYONE:

Standard Banners Group.jpg  
 Have you seen any of these or similar online ads before?  
 Yes  
 No

**Out of Home**

I:\Ads Master\Michigan\2019\ROI\Ads to Use\OOH

**Meanwhile in Michigan**

SHOW THE WRAP/TRAIN/AIRPORT ADS TO CHICAGO MARKET ONLY

Chicago Wrap Group.jpg  
 Have you seen any of these or similar bus wrap ads before?  
 Yes  
 No

Chicago Train.jpg  
 Have you seen any of these or similar train ads before?  
 Yes  
 No

Chicago Airport Group  
 Have you seen any of these or similar airport ads before?  
 Yes  
 No

SHOW THESE REMAINING OUT OF HOME ADS TO ALL MARKETS

Fall OOH Group.jpg  
 MIM OOH Group.jpg  
 Dark Sky Group.jpg

ASK FOR EACH GROUP:  
 Have you seen any of these or similar outdoor ads before?  
 Yes  
 No

**Radio**

I:\Ads Master\Michigan\2019\ROI\Ads to Use\Radio

FORCE ONLY :15 OF RADIO ADS

**Snow Day**

32 Degrees\_ZTMR0155000.mp3  
 Vimeo # - 380279250

Snow Day Rev\_ZTMR0122000.mp3  
 Vimeo # - 380296288

Snow Rev\_ZTMR0123000.wav  
 Vimeo # - 380295786

Gaylord\_Winter Rush.mp3  
 Vimeo # - 380284742

St Ignace\_Escape.mp3  
 Vimeo # - 380298153

Muskegon\_Take It Outside.mp3  
 Vimeo # - 380292879

Mt. Pleasant\_Season's Greetings.mp3  
 Vimeo # - 380292367

Soul 2\_ZTMR0136000.mp3  
 Vimeo # - 380297583

**SNOW DAY RADIO MARKET GRID**

Market	32 Degrees	Snow Day Rev	Snow Rev	Gaylord Winter Rush	St Ignace Escape	Muskegon Take It Outside	Season's Greetings	Soul
Chicago	x	x	x					
Cincinnati	x	x	x	x				
Cleveland				x	x			
Columbus					x	x		
Dayton	x	x	x	x				
Indianapolis	x	x	x			x		
Louisville								
Milwaukee	x	x	x		x			
Pittsburgh								
Fort Wayne	x	x	x					
Green Bay	x	x	x		x			
Minneapolis								
South Bend	x	x	x					
Southern Ontario	x	x	x					x
St. Louis							x	
Toledo					x		x	

# Questionnaire

Have you heard this or a similar radio ad before?

- Yes
- No

## Meanwhile in Michigan

SHOW 1 OF THESE 6 ADS TO ALL MARKETS EXCEPT REMAINING NATIONAL AND SOUTHERN ONTARIO:

Meanwhile\_in\_Michigan\_Monday\_ZTMR0207000.mp3  
Vimeo # - 380286812

Meanwhile\_in\_Michigan\_Tuesday\_ZTMR0208000.mp3  
Vimeo # - 380287386

Meanwhile\_in\_Michigan\_Wednesday\_ZTMR0209000.mp3  
Vimeo # - 380288035

Meanwhile in Michigan Thursday\_ZTMR0210000.mp3  
Vimeo # - 380288507

Meanwhile in Michigan Friday\_ZTMR0211000.mp3  
Vimeo # - 380289033

Meanwhile\_in\_Michigan\_Weekend\_ZTMR0212000  
Vimeo # - 380291146

Have you heard this or a similar radio ad promoting days of the week in Michigan before?

- Yes
- No

Q24. Now please think about **ALL** of the advertising that you just saw. What is your overall reaction to this campaign?

Very unfavorable	Unfavorable	Neutral	Favorable	Very favorable
1	2	3	4	5

Q25. Again, please think about **all** of the advertising that you just saw. Please indicate how much you agree that this campaign...

ROTATE	Strongly disagree	Disagree	Neutral	Agree	Strongly agree
Makes Michigan seem like an appealing place to visit	1	2	3	4	5
Shows that Michigan has enjoyable weather	1	2	3	4	5
Makes Michigan seem like a relaxing place to visit	1	2	3	4	5
Shows a wide variety of attractions & activities	1	2	3	4	5
Shows a side of Michigan that is surprising or unexpected	1	2	3	4	5
Shows diverse scenery	1	2	3	4	5
Makes Michigan look like a fun place to visit	1	2	3	4	5
Makes Michigan seem welcoming / friendly to all	1	2	3	4	5
Shows the unique experiences in Michigan	1	2	3	4	5
Is clear and understandable	1	2	3	4	5
Shows unexpected scenery	1	2	3	4	5

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Q26. Please indicate how much you agree that this campaign...

ROTATE	Strongly disagree	Disagree	Neutral	Agree	Strongly agree
Makes me want to learn more about things to see and do in Michigan	1	2	3	4	5
Makes me want to visit Michigan for a leisure trip	1	2	3	4	5

ASK Q27 IF ANSWER 4/5 FOR "MAKE ME WANT TO LEARN MORE" AT Q26

Q27. You mentioned that the ads make you want to learn more about things to see and do in Michigan. Please rank the following information sources in order of your likelihood to use them (1 = most likely, 6 = least likely).

ROTATE

The Michigan website <a href="http://www.michigan.org">www.michigan.org</a>	
Internet search engine	
Michigan travel guide	
Travel book/website such as Lonely Planet, Fodor's or Frommer's	
Travel review sites such as tripadvisor.com	
Travel booking sites such as expedia.com	

IF ANYWARE and VISIT IN 2019 = YES, ASK Q28

Q28. How did this advertising influence your 2019 Michigan trip? Select all that apply.

- 0. Made me want to visit
- 1. Made me want to stay longer
- 2. Made me want to visit more places in Michigan
- 3. Made me want to do more things on my trip
- 4. They had no influence.

The following questions are for classification purposes only so that your responses may be grouped with those of others. DO NOT FORCE DEMOS

- D1. What is your marital status?
- 1. Married/domestic partnership
  - 2. Divorced
  - 3. Widowed
  - 4. Single/never married

D2. Including you, how many people are currently living in your household? \_\_\_\_\_

IF D2 IS GREATER THAN 1 ASK:

D3. How many living in your household are children under the age of 18? \_\_\_\_\_

- D4. Which of the following categories represents the last grade of school you completed?
- 1. High school or less
  - 2. Some college/technical school
  - 3. College graduate
  - 4. Post-graduate degree

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D5. Which of the following categories best represents the total annual income for your household before taxes?

- 1. less than \$50,000
- 2. \$50,000 but less than \$75,000
- 3. \$75,000 but less than \$100,000
- 4. \$100,000 but less than \$125,000
- 5. \$125,000 but less than \$150,000
- 6. \$150,000 but less than \$200,000
- 7. \$200,000 or more

D7. Are you?

- 1. Male
- 2. Female

D8. Which of the following best describes your ethnic heritage? Are you...

- 1. Black/African-American
- 2. Asian-American
- 3. White/Caucasian
- 4. Hispanic/Latin American
- 5. Mixed ethnicity
- 6. Native American
- 7. Other

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**EXHIBIT 11**

**EXHIBIT 11**

**EXHIBIT 11**



[< Back to All](#)

# Study: Pure Michigan Earned \$8.79 Return For \$1 Spent On It

February 26, 2020

Courtesy of [Michigan Information & Research Service Inc.](#)

The latest [return-on-investment study](#) on the Pure Michigan ad campaign found a return of \$8.79 for every dollar spent on the combined warm weather and fall campaigns of 2019, according to the

Document received by the MI Court of Claims.

Michigan Economic Development Corp. (MEDC) Thursday.

According to the MEDC in a press release, \$16.1 million was spent on out-of-state Pure Michigan campaigns in regional markets and the national cable advertising campaign in 2019.

Out-of-state visitor spending of more than \$2.3 billion motivated by the campaign supported \$141.9 million in state tax revenue. The \$2.3 billion spent by visitors was down slightly from the \$2.4 billion spent the year before.

"These numbers show that advertising — and our related efforts in public relations including our own social and digital channels — continues to drive travel and the Pure Michigan campaign continues to drive economic growth, supporting statewide economic development efforts to showcase Michigan as a great place to live, work and play," said David Lorenz, vice president of MEDC's Travel Michigan, in a statement.

The report found approximately 5.8 million visits were made to Michigan from outside of the state as a result of exposure to the Pure Michigan warm weather and fall campaigns in 2019, according to the press release.

The study was conducted for the MEDC by Strategic Marketing and Research Insights, described as a travel and tourism focused research organization.

The previous vendor that had routinely conducted the return-on-investment study was replaced by Strategic Marketing by the Michigan Strategic Fund Board a few years ago.

Not long after the decision, an audit found Longwoods' calculation of the Pure Michigan return on investment left out roughly \$16.8 million in tourism promotion costs, and also didn't figure in any local taxes generated.

Michael LaFaive, senior director of fiscal policy for the Mackinac Center, said Thursday there's "no independent study to corroborate the claims that Pure Michigan generates economic growth for the state," but did say there is "independent evidence that programs like Pure Michigan may have zero to negative impact."

LaFaive referenced the Mackinac Center's own study that found that "for every \$1 million increase in tourism expenditures there is an increase in economic activity in our hotel and motel industry (accommodations) of just \$20,000."

As of now, funding for Pure Michigan is no more, after Gov. Gretchen Whitmer vetoed that line item for Fiscal Year (FY) 2020. Whitmer included roughly half of what it was previously funded at in her FY 2021 budget proposal.

LaFaive said, "The state should not reinstitute spending on this program. Evidence shows it has been ineffective, expensive and unfair."

Share On:

## Connect With Us

### Contact

1-800-362-5461

120 N. Washington Square, Suite 1000  
Lansing, MI 48933, United States


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**EXHIBIT 12**

**EXHIBIT 12**

**EXHIBIT 12**

 KeyCite Red Flag - Severe Negative Treatment  
Reversed and Remanded by Bisio v. City of Village of Clarkston, Mich.,  
July 24, 2020

**2018 WL 3244117**

**Only the Westlaw citation is currently  
available.**

**UNPUBLISHED OPINION. CHECK  
COURT RULES BEFORE CITING.**

**UNPUBLISHED  
Court of Appeals of Michigan.**

**Susan BISIO, Plaintiff-Appellant,**

**v.**

**The CITY OF the VILLAGE OF  
CLARKSTON, Defendant-Appellee.**

**No. 335422**

**July 3, 2018**

Oakland Circuit Court, LC No. 2015-  
150462-CZ

Before: Beckering, P.J., and M. J. Kelly and  
O'Brien, JJ.

### **Opinion**

Per Curiam.

**\*1** Plaintiff, Susan Bisio, appeals as of right from an order granting summary disposition of her claim under Michigan's Freedom of Information Act (FOIA), MCL 15.231 *et seq.*, to defendant, City of the Village of Clarkston, and deeming moot her cross-motion for summary disposition on

defendant's defenses.<sup>1</sup> Plaintiff also challenges the trial court's June 8, 2016 order denying her motion in limine to exclude evidence of her motive for requesting the records at issue and her intended use of them. For the reasons stated below, we affirm the trial court's grant of summary disposition to defendant on plaintiff's FOIA claim.

### **I. STATEMENT OF PERTINENT FACTS AND PROCEDURAL HISTORY**

On June 7, 2015, plaintiff submitted a FOIA request to defendant requesting, among other things, correspondence referenced in certain monthly billing invoices submitted to the city by the city attorney, Thomas Ryan, and by engineering consultants Hubbell, Roth, & Clark (HRC). The documents requested pertained primarily to a development project at 148 N. Main Street and the cleanup of vacant property located at Walden Road and M-15. Plaintiff also requested any other correspondence "pertaining to the conditional rezoning of 148 N. Main and storm water collection, retention, or detention at the proposed redevelopment at 148 N. Main from January 1, 2014 to the present." Plaintiff received most of the records she requested, but a letter from the city attorney informed her that 18 of the items referenced in his invoices were not public records. Subsequent communications brought the release of a few more records and corrections of some of the deficiencies in disclosures already made. Defendant maintained, however, that certain items in the city attorney's files and the files of the HRC were

Document received by the MI Court of Claims.

not public records because the city had never received the records and neither the city attorney nor HRC was a “public body” for purposes of FOIA.

On December 4, 2015, plaintiff filed a FOIA complaint asking the court to order defendant to produce all of the records she had requested, regardless of where they were located. In its answer, defendant denied having violated FOIA by refusing to disclose public records and asserted affirmative defenses under MCR 2.116(C)(8) (failure to state a claim), (C)(5) (plaintiff is not the party in interest), and (C)(6) (prior action asserting the same claims). Defendant contended that the purpose of plaintiff’s FOIA request was to obtain documents for use by her husband, Richard Bisio, in a complaint he had previously filed against defendant alleging violation of the Open Meetings Act, MCL 15.261 *et seq* (OMA).<sup>2</sup> Accordingly, defendant asserted that the requested documents were exempt under MCL 15.243(1)(v) because they related “to a civil action in which the requesting party and the public body are parties.”

\*2 Along with her FOIA complaint, plaintiff filed a motion for partial summary disposition. Relying on agency principles, plaintiff argued that the city attorney was defendant’s agent and stood in defendant’s shoes such that the documents the city attorney possessed that pertained to city business belong to defendant. Therefore, the requested documents are public records because they are “in the possession” of defendant and because the city attorney, as an agent for defendant, “used” them to conduct city business and “retained” them. Plaintiff further argued that neither the physical

location of the records in the city attorney’s office nor the fact that the city attorney is not a “public body” changes the character of the records as “public records.” Defendant filed a response to plaintiff’s motion for partial summary disposition and a cross-motion for summary disposition pursuant to MCR 2.116(C)(6), asserting that Richard Bisio was the real party in interest and that plaintiff’s FOIA complaint was in service of his OMA complaint. With these motions still pending, plaintiff filed a motion for summary disposition on defendant’s affirmative defenses, contending that they were “based on the erroneous premise that Susan Bisio is not a person separate from her husband and that the ‘real’ plaintiff here is Richard Bisio.”

Subsequent to oral argument, the trial court denied both of plaintiff’s motions, finding that a genuine issue of material fact existed as to whether the records were public records and that facts could be developed to support defendant’s affirmative defenses. Prior to oral argument, defendant and Richard had entered into a consent judgment in Richard’s OMA claim that preserved plaintiff’s FOIA claim. Consequently, the trial court also denied as moot defendant’s motion for summary disposition pursuant to MCR 2.116(C)(6).

Plaintiff next filed a motion in limine to exclude evidence of her motive for requesting records and for her intended use of the records. She asserted that defendant based its defenses primarily on the erroneous assumption that she is just a “front” for her husband and that she filed her FOIA request at his behest “to obtain records for use in his now-dismissed lawsuit against the city.” Denying this assumption as untrue, plaintiff

argued that a requester's motive and intended use of the documents requested is nevertheless irrelevant, and irrelevant evidence is inadmissible under MRE 402. Defendant responded by indicating that granting plaintiff's motion would be premature, as discovery had not yet closed, and further discovery might produce evidence that plaintiff intended by her FOIA action to obtain documents relevant to her husband's now-dismissed OMA case. The trial court denied plaintiff's motion.

After discovery closed, defendant filed a motion for summary disposition primarily on the ground that the records sought were not public records for purposes of FOIA because they were not "prepared, owned, used, in the possession of, or retained by a public body in the performance of an official function." Plaintiff responded with a cross-motion for summary disposition on the defendant's asserted exemptions from disclosure as well as on the exemptions defendant did not formally assert. In addition, plaintiff sought summary disposition on her request for imposition of a civil fine and award of punitive damage as provided for under FOIA, citing MCL 15.240(7) and MCL 15.240a(7).

Subsequent to oral argument, the trial court granted defendant's motion for summary disposition and deemed plaintiff's cross-motion moot. The trial court found no documentary evidence establishing that the city attorney shared the contested records with defendant, that defendant used the contested records to make a decision related to the subject matter of the records, or that defendant retained the contested records in performance of an official function. Thus, the trial court concluded that the contested

records were not public records. Accordingly, the trial court granted defendant summary disposition of plaintiff's complaint pursuant to MCR 2.116(C)(10) and denied as moot plaintiff's cross motion for summary disposition. This appeal followed.

## II. ANALYSIS

### A. STANDARDS OF REVIEW

We review a trial court's summary disposition decision de novo. *Thomas v. City of New Baltimore*, 254 Mich. App. 196, 200; 657 N.W.2d 530 (2002). Summary disposition under MCR 2.116(C)(10) is proper if the documentary evidence filed by the parties and viewed in the light most favorable to the party opposing the motion fails to show a genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. *Quinto v. Cross & Peters Co.*, 451 Mich. 358, 362; 547 N.W.2d 314 (1996). "A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ." *West v. Gen. Motors Corp.*, 469 Mich. 177, 183; 665 N.W.2d 468 (2003).

\*3 We also review de novo questions of statutory interpretation. *Ellison v. Dep't of State*, 320 Mich. App. 169, 175; 906 N.W.2d 221 (2017). "If the language of a statute is clear and unambiguous, the plain meaning of the statute reflects the legislative intent and

judicial construction is not permitted.” *Id.* quoting *Herald Co. v. City of Bay City*, 463 Mich. 111, 117-118; 614 N.W.2d 873 (2000).

We review a trial court’s decision on a motion in limine for an abuse of discretion. See *Lockridge v. Oakwood Hosp.*, 285 Mich. App. 678, 693; 777 N.W.2d 511 (2009). An abuse of discretion occurs when the decision results in an outcome falling outside the range of principled outcomes. *Arabo v. Michigan Gaming Control Bd.*, 310 Mich. App. 370, 397-398; 872 N.W.2d 223 (2015). “A court by definition abuses its discretion when it makes an error of law.” *In re Waters Drain Drainage Dist.*, 296 Mich. App. 214, 220; 818 N.W.2d 478 (2012).

## B. PUBLIC RECORDS

Plaintiff first contends that the trial court erred in granting defendant summary disposition based on its conclusion that the records at issue are not public records. We disagree.

The purpose of FOIA is to allow the public to “examine and review the workings of government and its executive officials.” *Thomas*, 254 Mich. App. at 201. Unless public records are exempt from disclosure under MCL 15.243, they are subject to disclosure under FOIA. MCL 15.232(e)(i) and (ii). A “public record” means “a writing prepared, owned, used, in the possession of, or retained by a public body in the performance of an official function, from the time it is created.” MCL 15.232(e). A “public body” includes “[a] county, city, township,

village, intercounty, intercity, or regional governing body, council, school district, special district, or municipal corporation, or a board, department, commission, council, or agency thereof.” MCL 15.232(d)(iii). Public records are not insulated from FOIA by their location or the fact that a private entity created them originally for its own use. See, e.g., *Amberg v. City of Dearborn*, 497 Mich. 28; 859 N.W.2d 674 (2014) (private businesses’ surveillance videos collected as evidence by law enforcement personnel were public records because they were used to support the defendant’s decision to issue a citation).

Plaintiff contends that the city attorney is defendant’s agent and that the documents that the city attorney creates, possesses, retains, and uses in the conduct of his work for defendant belong to defendant, the city attorney’s principal. For this reason, the letters at issue are records “prepared, owned, used, in the possession of, or retained” by defendant. Plaintiff also contends that the city attorney performed an “official function” for defendant when he sent or received each letter in his capacity as city attorney, and each letter involved city business. According to plaintiff, limiting “official business” to formal decisions of the type reflected in meeting minutes reads the FOIA statute too narrowly and gives defendant too much discretion in deciding what constitutes a public record.

Plaintiff’s use of agency principles to argue that the contested documents the city attorney sent and received while negotiating for the city are public records subject to disclosure under FOIA is seductive, but it is unsupported by the plain language of the

relevant statutes, by Michigan caselaw, and by the foreign caselaw relied upon by plaintiff.

\*4 Absent an ambiguity, the Court may presume that MCL 15.232(e) expresses the Legislature’s intent that in order for a record to be subject to FOIA, a public body must have prepared, owned, used, possessed or retained the record in the performance of an official function. See *Ellison*, 320 Mich. App. at 175 (“If the language of a statute is clear and unambiguous, the plain meaning of the statute reflects the legislative intent and judicial construction is not permitted.”) The definition of “public body” provided by MCL 15.232(d)(iii) does not include officers or employees acting on behalf of cities, townships, and villages. By contrast, MCL 15.232(d)(i), which provides the definition of “public body” relevant to the executive branch of state government, does include officers and employees acting on behalf of the public body. Had the Legislature so intended, it could have included officers or employees, or agents, in the definition of public body that pertains to cities, townships, and villages. That it did not indicates the Legislature’s intent to limit “public body” in § 232(d)(iii) to the governing bodies of the entities listed. This interpretation finds support in the Michigan Supreme Court’s decision in *Breighner v. Mich. High Sch. Athletic Ass’n*, 471 Mich. 217; 683 N.W.2d 639 (2004).

At issue in *Breighner* was whether the Michigan High School Athletic Association (MHSAA) was a “public body” as defined at MCL 15.232(d). *Breighner*, 471 Mich. at 219. The plaintiffs argued that the MHSAA was a public body as defined by § 232(d)(iii)

because “it acts as an ‘agent’ for its member schools[.]” *Id.* at 232. The trial court ruled for the plaintiff on other grounds, but this Court reversed in a split decision, with the majority rejecting the plaintiffs’ argument that the MHSAA is an ‘agent’ of the state and therefore subject to FOIA under § 232(d)(iii). *Breighner*, 471 Mich. at 224.

Affirming this Court’s decision, the Michigan Supreme Court observed that the majority and the parties “appear to have assumed that § 232(d)(iii) includes ‘agents’ of enumerated governmental entities in the definition of ‘public body.’ ” *Id.* at 232. Disagreeing, the *Breighner* Court stated that “agent” and “agency” were not the same thing, and that “[h]ad the Legislature intended any ‘agent’ of the enumerated governmental entities to qualify under § 232(d)(iii), it would have used that term instead of ‘agency.’ ” *Id.* at 232-233. The Court further noted in a footnote that it would “defy logic to conclude that any person or entity qualifying as an ‘agent’ of one of the enumerated governmental bodies would be considered a ‘public body’ for purposes of FOIA. *Id.* at 233 n 6. These observations are arguably nonbinding dicta, but we find the reasoning of the Supreme Court persuasive and consistent with the plain language of § 232(d)(iii) and with Michigan caselaw. See *Eyde Bros Dev. Co. v. Eaton Co. Drain Comm’r*, 427 Mich. 271, 286; 398 N.W.2d 297 (1986); *Dye v. St. John Hosp. and Med. Ctr.*, 230 Mich. App. 661, 669; 584 N.W.2d 747 (1998).

Plaintiff argues that the *Breighner* Court’s holding is irrelevant to the case at bar because she has never claimed that the city attorney was a public body. Rather, she argues that,

because an agent's records are the principal's records, the city attorney's records are defendant's records; thus, to the extent that the city attorney possesses them in the conduct of city business, defendant possesses them in the performance of an official function. Plaintiff's argument is unavailing because it does not circumvent the requirement of § 232(e) that public records are those prepared, owned, used, possessed or retained in the performance of an official function by the "public body" and *Breighner's* indication that "public body" does not include agents of the public body. Plaintiff's argument is also unsupported by caselaw suggesting that for a record to become a public record subject to FOIA, the record has to be adopted by the public body itself in one of the ways stated in § 232(e), not simply used, possessed, or retained by someone acting on behalf of the public body. In *Hoffman v. Bay City Sch. Dist.*, 137 Mich. App. 333; 357 N.W.2d 686 (1984), this Court held that records created by the school district's attorney during his investigation of the district's finance department were not public records because the attorney reported his findings orally, without at any time sharing the documents in his investigatory file with the district. Like *Hoffman*, the records at issue in this case have remained in possession of the city attorney. There is no evidence suggesting that he has shown them to the city council, that council members have used them for the basis of a decision, or even that the letters sent and received have resulted in an agreed-upon proposal that the city attorney could submit for the council's consideration.

\*5 Plaintiff and his amici contend that *Hoffman* was wrongly decided. The amici

argue that the Court should have concluded that the attorney's investigation records were public records, but that they were exempt under MCL 15.243(g) as attorney-client privilege, subsection (h) as work product, or subsection (m) as frank communication. Plaintiff contends that *Hoffman* should be limited to its facts and that the work of the charter-appointed city attorney on behalf of the defendant city is qualitatively different from "an internal investigation by a retained attorney on which no action was taken." Plaintiff further contends that *Hoffman* has been superseded by cases such as *MacKenzie v. Wales Twp.*, 247 Mich. App. 124, 129; 635 N.W.2d 335 (2001). Plaintiff relies on *MacKenzie* for the proposition that "FOIA applies to records in the 'control' of a public body, not just those in its possession" and that "it is the content of the record, not its location, that determines whether it is a public record."

We do not believe that *MacKenzie* has superseded *Hoffman*; in fact, this Court distinguished its holding in *MacKenzie* from that in *Hoffman*. At issue in *MacKenzie* was whether magnetic computer tapes created from tax information provided by two townships and possessed by a third party at the behest of the defendant townships were public records subject to disclosure under FOIA. *MacKenzie*, 247 Mich. App. at 125-126. The townships used the magnetic computer tapes created by the third party to generate tax notifications to their respective property owners. The third party kept the tapes after creating them, but sent the documents from which it created the tapes back to the townships. When the plaintiff requested a copy of the tapes pursuant to FOIA, both townships argued essentially that

the tapes were not subject to release under FOIA because the townships did not possess the tapes. The trial court granted summary disposition to the defendants, finding that the tapes “were not ‘records’ as defined by FOIA because defendants did not create or possess the tapes.” *Id.*

On appeal, this Court determined that the magnetic computer tapes were public records because defendants used them to perform the official function of preparing tax notices for property owners. *Id.* at 129. Distinguishing the case from *Hoffman*, the Court observed that the attorney in *Hoffman* created and retained information and reported only his opinion of the results of his investigation to the school board, not the information actually obtained during his investigation. In *MacKenzie*, however, the townships had access to the information from which the computer tapes were created, had provided that information to the third party so it could create the tapes at issue, used the tapes to send tax notifications to their property owners, and maintained a measure of control over the tapes. *Id.* at 130-131. Thus, although in both *Hoffman* and *MacKenzie*, the alleged public records were not in the possession of the relevant public bodies, the determining factor was not the location of the records at issue, but whether they were “prepared, owned, used, or retained” by the public bodies in the performance of an official function. In *Hoffman* they were not, but in *MacKenzie* they were.

Plaintiff relies on a number of cases from foreign jurisdictions to contend that records prepared on behalf of a public body and held remotely are public records subject to FOIA requests. See *In re Jajuga Estate*, 312 Mich.

App. 706, 723 n 7; 881 N.W.2d 487 (2015) (noting, “[c]ases from other jurisdictions, although not binding, may be persuasive”). Having reviewed these cases, we do not find them applicable to the case at bar.

Plaintiff first relies on *Nissen v. Pierce Co.*, 183 Wash 2d 863, ¶ 17; 357 P3d 45 (2015). However, *Nissen* is inapplicable because it addresses whether work product prepared by an agency employee is necessarily a record of a state or local agency subject to disclosure under Washington law. The city attorney in the case at bar is not employed by defendant, and defendant is not a state agency. Plaintiff also relies on *Knightstown Banner, LLC v. Town of Knightstown*, 838 NE2d 1127 (Ind App, 2005), and *State ex rel Findlay Publishing Co. v. Hancock Co. Bd. of Comm’rs*, 80 Ohio St 3d 134; 684 NE2d 1222 (1997), to argue that a public body’s documents filed in an attorney’s law office are public records subject to disclosure. But, these cases are distinguishable from the case at bar because the documents involved in *Knightstown Banner* and *State ex re Findlay Publishing* were settlement agreements drafted, adopted, and used by the public bodies to obtain release from liability during the course of their respective attorneys’ representation. *Knightstown Banner, LLC*, 838 NE2d at 1133; *State ex re Findlay Publishing Co*, 80 Ohio St 3d at 137. As the trial court noted in the instant case, there is no evidence that defendant used the letters prepared by its city attorney. Plaintiff’s reliance on *Forum Publishing Co. v. City of Fargo*, 391 N.W.2d 169 (ND, 1986), is misplaced because the breadth of North Dakota’s statute guaranteeing public access to records far exceeds that of Michigan. Under North Dakota law, *all* records of a



public body are public records, without regard to whether the public body prepared, owned, used, possessed, or retained them in the performance of an official function.<sup>3</sup> This is not the law in Michigan.

\*6 Finally, *Creative Restaurants, Inc. v. Memphis*, 795 SW2d 672 (Tenn App, 2014), addresses whether subleases of real property owned by the city in its Beale Street Historic District and held in the office of the city's part-time attorney were public records. *Creative Restaurants, Inc.*, 795 SW2d at 673-674. The city had leased the property to the Beale Street Development Corporation, which sublet it to a private concern that changed its name to Beale Street Management, which, in turn, sublet properties to tenants. The subleases benefitted the city's development of the property and listed the city as landlord as long as it was not in default. *Id.* Under these circumstances, and considering that the city had "financial, cultural, historical and political interests" in the property, the court held that the subleases qualified as public records under Tennessee's Open Records Act. *Id.* at 678. The court determined that the city's integral involvement in the Beale Street property and in the subleasing scheme is what made the subleases public records. In the present case, plaintiff presented no evidence that defendant is similarly involved in the two properties that are the subject of the disputed correspondence.

Plaintiff's foreign cases support her proposition that public records held remotely are subject to disclosure under FOIA. But they are not instructive on the issue of whether records prepared, used, and obtained by a city attorney during the course of

negotiating issues relevant to the city's environmental concerns but not submitted to the city, and with no evidence of the city having acted on them, are public records under MCL 15.232(e). All of the relevant foreign cases involve records that the public bodies had somehow used in the performance of an official function, regardless of whether the public body ultimately possessed the records. Likewise, the plain language of the relevant statutes defining public record and public body, as well as relevant Michigan caselaw, do not support plaintiff's contention that the city attorney's possession and use of records in his role as city attorney is tantamount to the public body's use and possession of the records in the performance of an official function. Plaintiff's argument, though appealing, is ultimately unsuccessful because it represents an expansion of the definition of "public body" and of "public record" that is unsupported by Michigan law. For these reasons, we affirm the trial court's grant of summary disposition to defendant on plaintiff's FOIA claims. Given our disposition of this issue, we need not address plaintiff's argument regarding the inapplicability of the exceptions to disclosure provided in MCL 15.243.

## B. MOTIVE AND INTENDED USE

Plaintiff argues that the trial court abused its discretion by denying her motion to exclude evidence of her motive and intended use of the requested records. We agree, but conclude that the error is harmless.

The seminal case addressing the relevance of

a party's intended use of documents requested under FOIA is *Taylor v. Lansing Bd. of Water and Light*, 272 Mich. App. 200 (2006). At issue in *Taylor* was whether MCL 15.243(1)(v) exempted records requested from the Lansing Board of Water and Light ("BWL") by the plaintiff on behalf of her best friend, Virginia Cluley, who was involved in litigation against the BWL. The plaintiff filed a FOIA request for records that were relevant to Cluley's case against the BWL, but were unavailable to Cluley pursuant to MCL 15.243(1)(v).<sup>4</sup> See *Taylor*, 272 Mich. App. at 202. The defendant denied the request, claiming exemption under MCL 15.243(1)(v) and arguing that plaintiff was acting as Cluley's agent to obtain documents to assist her in her case against the BWL. *Id.* The trial court disagreed, denied the defendant's motion for summary disposition, and ordered the defendant to produce the requested documents. Defendant appealed.

\*7 On appeal, this Court noted that "exemptions must be narrowly construed, and the party seeking to invoke an exemption must prove that nondisclosure is in accord with the intent of the Legislature. *Id.* at 205. The public body asserting the exemption in MCL 15.243(1)(v) has the burden to prove that it is a party to a civil action involving the requesting party." *Id.* Otherwise, "the public body is afforded no exemption from disclosure based solely on the status of one of the parties as litigants." *Id.* "[I]nitial as well as future uses of information requested under FOIA are irrelevant in determining whether the information falls within the exemption." *Id.* Because the plaintiff was not a party to the

Cluley lawsuit with the BWL, MCL 15.243(1)(v) did not operate to exempt her request for documents related to the lawsuit. See also *Rataj v. City of Romulus*, 306 Mich. App. 735, 752-753; 858 N.W.2d 116 (2014) (whether the attorney seeking disclosure of records sought to obtain evidence for another lawsuit was irrelevant); *Clerical-Technical Union of Michigan State Univ. v. Bd. of Trustees of Michigan State Univ.*, 190 Mich. App. 300, 303; 475 N.W.2d 373 (1991) (deeming irrelevant "[t]he initial as well as the future use of the requested information").

Although the trial court erred in denying plaintiff's motion in limine, the error was harmless with regard to the court's ultimate decision on plaintiff's FOIA claim. "An error in the admission or the exclusion of evidence, [or] an error in a ruling ... is not ground for ... vacating, modifying, or otherwise disturbing a judgment or order, unless refusal to take this action appears to the court inconsistent with substantial justice." MCR 2.613(A). The trial court's ruling that the records at issue are not public records subject to disclosure under FOIA, and this Court's affirmation of that ruling, renders harmless the trial court's denial of plaintiff's motion in limine.<sup>5</sup>

Affirmed.

### All Citations

Not Reported in N.W. Rptr., 2018 WL 3244117

### Footnotes

- 1 We permitted the Michigan Press Association and Detroit Free Press to file a joint amicus brief on behalf of plaintiff. *Susan Bisio v. The City of the Village of Clarkston*, unpublished order of the Court of Appeals, entered June 21, 2017 (Docket No. 335422). We also permitted the Michigan Municipal League and the Michigan Townships Association to file a joint amicus brief on behalf of defendant. *Susan Bisio v. The City of the Village of Clarkston*, unpublished order of the Court of Appeals, entered July 26, 2017 (Docket No. 335422). We also granted plaintiff's motion for leave to reply to the joint amicus brief of the Michigan Press Association and Detroit Free Press. *Susan Bisio v. The City of the Village of Clarkston*, unpublished order of the Court of Appeals, entered September 6, 2017 (Docket No. 335422).
  
- 2 Five days before plaintiff filed the underlying FOIA complaint, her attorney and husband, Richard Bisio, filed a complaint alleging that defendant violated the OMA. After defendant denied plaintiff's request in part, Richard amended his OMA complaint to add a count asking for a declaratory judgment that written documents to and from the city attorney, in his capacity as city attorney, were public records under FOIA, regardless of their being kept in his private files. Defendant has maintained throughout the instant action that plaintiff, as a proxy for her husband, submitted her FOIA request to obtain for Richard's use in his OMA case documents otherwise not available to him.
  
- 3 NDCC 44-04-18(1) provides:  

Except as otherwise specifically provided by law, all records of public or governmental bodies, boards, bureaus, commissions or agencies of the state or any political subdivision of the state, or organizations or agencies supported in whole or in part by public funds, or expending public funds, shall be public records, open and accessible for inspection during reasonable office hours.
  
- 4 MCL 15.243(1)(v) provides that "[a] public body may exempt from disclosure as a public record ... [r]ecords or information relating to a civil action in which the requesting party and the public body are parties."
  
- 5 Although plaintiff's claim that the trial court erred in not granting her motion in limine is effectively a moot point given our conclusion that the records sought are not public records under FOIA, plaintiff contends that this issue is relevant to defendant's motion for fees, which the trial court took under advisement pending our decision on appeal.